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XXV.

ON THE BUILDING ACT OF THE EMPEROR ZENO:  
BEING THE POLICE REGULATION OR LAW OF THE EMPEROR ZENO,  
ON THE CONSTRUCTION AND DISPOSITION OF PRIVATE  
HOUSES IN CONSTANTINOPLE.

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Read at the Academy of Sciences, (Berlin,) on the 8th February, 1844.\*

*Translated by*

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TO WHICH IS ADDED, BY THE SAME, A TRANSLATION OF SEVERAL IMPERIAL LAWS  
RELATING TO THAT SUBJECT, AND ENACTED DURING THE THIRD AND  
THREE FOLLOWING CENTURIES OF OUR ERA.

ONE of the most remarkable documents in the collection of Justinian's Constitutions is an ordinance of the Emperor Zeno,† originally promulgated in the Greek language, and containing regulations respecting the building of private houses. This ordinance not only treats generally and largely on the relative elevations and distances of contiguous private buildings in Constantinople, but also on the liberty allowed, in case of a friendly understanding amongst individuals having a common interest therein, to arrange the exterior architectural plan of their residences according to their own convenience. At the same

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\* *Das Polizei-Gesetz des Kaisers Zeno, über die bauliche Anlage der Privathäuser in Constantinopel*, von HEN. H. E. DIRKSEN, (abhandlungen der Königl. Akad. der Wissenschaften zu Berlin, 1844, p. 81).

† Zeno reigned from A.D. 474 to A.D. 491. Justinian reigned from A.D. 527 to A.D. 565.

time, there is scarcely any other existing monument of the Roman constitutional law, of which it can be said, on such good grounds, that the decree of the legislator, though known to exist, was so little appreciated in respect to its real character, its purport, or its contents. Some few preliminary observations may be acceptable on the cause of this remarkable circumstance.

The codex of Justinian contains, in separate and distinct sections, the laws which relate to private buildings,<sup>1</sup> and those which were enacted to regulate public works.<sup>2</sup> And although, amongst the documents which still exist of the collection of the Constitutions of Theodosius,\* we have that section only which treats of the last-mentioned division, namely, the public works,<sup>3</sup> it can scarcely admit of a doubt that a section relating to the law of private houses did also exist in the Constitutions of Theodosius, and that it served as a model for the system compiled under Justinian. The collection of the laws of Burgundy, for Roman citizens, cites indeed, a special title of this description, though not with perfect official accuracy, from the codex of the Constitutions of Theodosius:<sup>4</sup> and we find in the corresponding title of Justinian's collection several laws of Constantine and his successors, the greater part of which appear to have been formed out of this supposed lost section of the Theodosian codex;<sup>5</sup> though we may fairly conclude, from the corresponding section of the Constitutions of Justinian, that the Theodosian codex did not contain any very comprehensive enactments on the subject of domestic architecture; for such of the regulations as are contained in the Constitutions of Justinian, corresponding in order of time with those in the Theodosian codex, simply relate to some insulated and unimportant objects of municipal building law. On the other hand, at the conclusion of this same title relating to private buildings, we find a law, subsequent to the reign of Theodosius, which, notwithstanding its originally merely local application, is par-

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\* Theodosius reigned from A.D. 379 to A.D. 395.

ticularly worthy of attention as a building police regulation, or building act as it may be called, remarkable for the important information which it gives us, and for the distinctness with which its details are carried out;—this is the ordinance of the Emperor Zeno, which is described as an Instruction to the prefect of the City of Constantinople;<sup>6</sup> and which, as a municipal or civil law of a place inhabited by Greeks, is drawn up in the Greek tongue.<sup>7</sup> Justinian himself declares this ordinance to be the most important and comprehensive of all the regulations on the subject, and he made it a common and general law of the empire.<sup>8</sup> Consequently, in this redaction of the codex of the Constitutions, the corresponding ordinance of the Emperor Leo I.,\* as well as an earlier law of the Emperor Zeno on the same subject, were effectually superseded, as mere essays on the subject, and comparatively useless and insignificant, although the law of Zeno, of which we are now speaking, expressly refers to them as precedents.<sup>9</sup> And whilst Justinian thought it expedient to enact, by a special law,<sup>10</sup> that this later regulation of the Emperor Zeno should become, from a simple civic decree, an universal law of the empire, he was not induced to add anything to it. However, some years after, to prevent misunderstandings and evasions, he did make another special law on the subject, but merely as a supplement or appendix to that of Zeno.<sup>11</sup>

In the collection of Justinian's Constitutions, this building law of Zeno was preserved in its original Greek text, whilst the copies of the collection made in the Western Empire omitted altogether the Greek text, without substituting anything in its place; and when the Latin version was annexed to the Greek text, the contents of Zeno's ordinance were merely referred to, and the document itself was necessarily lost sight of, and was only recovered by a series of circumstances, which are not without their importance in estimating the value and

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\* Leo I. reigned from 457 to 474.

genuineness of the existing text. A short description of these circumstances, though they have already been sufficiently explained by other commentators,<sup>12</sup> will not be out of place here.

The complete original text of Zeno's law was first brought to light in manuscripts of the Greek *Novellæ* of Justinian:<sup>13</sup> it was given to the public in connection with them,<sup>14</sup> and it thus gradually passed into the several editions of the codex of Justinian's Constitutions. In the collections of Roman laws subsequent to those of Justinian, we meet with the same text in a great variety of forms.<sup>15</sup> In the Bodleian Manuscript of a collection, composed of various fragments of laws, relating to profane as well as to ecclesiastical subjects, subsequent to Justinian, this text is given quite perfect, at least for the first half, reaching to the conclusion of sec. 5.<sup>16</sup> The other known collections give only extracts of this text, from first, second, or even third-hand authorities, as it may happen. Of the former class of authorities are the *Prochiron*, and the *Synopsis* of the *Basilica*, of the Emperors Basil I., Leo VI., and Constantine VII.,<sup>17</sup> (867-959), from which last the portion of the original text, which is imperfect in this section, is completed in the editions of the *Basilica*.<sup>18</sup> The publications of Constantine Harmenopoulos<sup>19</sup> upon this subject must be referred to the other class of authorities. These last are said to be memoranda, or notes, compiled by an architect of Ascalon, of the name of Julianus, from the edicts of the prefects.<sup>20</sup> The contents are a medley of the most varied description; for they not only treat of the local rights or laws of single individual districts,<sup>21</sup> but references are also made in them at one and the same time to the *Responsa* of Papinian, and to the laws of Zeno;<sup>22</sup> at times, also, expressions of the classic writers on the science of building seem to have been present to the memory of the architect-compiler.<sup>23</sup>

We can no longer say, with certainty, to what extent the original text of the *Basilica* contained the whole of Zeno's law; but we may presume that the compilers of the *Basilica* must



have especially had in view that part of the law (sec. 6, c. xii. 1) which referred to the public piazzas or squares of Constantinople, without regard to the rest of the law, or to the next following section, which treated of the public buildings; for in the Synopsis<sup>24</sup> of the Basilica we actually find the same separation of subjects; and this explains the remarkable circumstance, that the insertion of the complete text of Zeno's ordinance in the Bodleian MS. is only continued to the close of the fifth section.<sup>25</sup>

On the other hand, we have no reason to doubt the fact, that the compilers of the collection of the Constitutions of Justinian admitted into the section on private buildings the text of Zeno's ordinance in as perfect and as connected a state, as that in which it was originally published from the manuscripts of Justinian's Novellæ, and as it was afterwards, for the more complete restoration of that law, transferred to the editions of the codex of Constitutions. It has recently been supposed by a learned writer,<sup>26</sup> well versed in this branch of documentary knowledge, that the whole contents of Zeno's ordinance as they appear in the *Constitutio Restituta* of this emperor, and as they must, in all probability, have been preserved in the collections of prefects' edicts, can scarcely have been admitted into the collection of Justinian's Constitutions; as the compilers of these last would naturally have thought that a mere extract of its most important principles would be fitter for their purpose. This view of the matter, though its consequences are not quite free from contradictions,<sup>27</sup> has, nevertheless, received the approbation of some high authorities.<sup>28</sup> But the argument adduced in support of it is more specious than demonstrative. It is assumed that Justinian's compilers could not have considered themselves justified in collecting, besides his own laws, those also of his predecessors without abridgment, when they saw that this abridgment was, in fact, quite as detailed as the full ordinance of Zeno itself; nor is the other plea thought to be without due importance, namely, that Zeno's law could scarcely have been admitted into the copies of the collection of the Greek text of Justinian's

Novellæ, if such law was already given at full length in the codex of the Constitutions. In this course of argument it has, however, been entirely overlooked that Justinian did, by an express law,<sup>29</sup> appropriate to himself the ordinance of Zeno, when he gave to what was before a mere local regulation the higher character of a general law of the empire. In this fact, we see the implied instruction to the compilers of the codex of his constitutions, to distinguish Zeno's ordinance from all similar ordinances of Justinian's predecessors, by the full and entire admission of it into the collection. In his Novellæ, also,<sup>30</sup> Justinian again refers to this same municipal building-law of Zeno, and he makes one insulated point of it the object of a declaratory enactment. Seeing, then, that this declaration of Zeno's ordinance is mentioned with distinction in the edicts of the prætors,<sup>31</sup> as well as in the extracts from the text of Justinian's Novellæ,<sup>32</sup> it was natural enough for the collectors and copyists of the *Greek* text of the Novellæ also to admit the whole of Zeno's law in its Greek version, although it was also to be found in the codex of Justinian's Constitutions. It may at least be stated with great probability, that the text of this law would have been preserved in a much more perfect state in the edicts of the prætors, than in the collections of Justinian. The remains of the eparchica of this period prove, without exception, the endeavours which were made to give merely a compendium of the many and varied contents of a legal document of the nature of Zeno's ordinance; not, indeed, to do even this continuously, but in detached parts, according to the subjects, and arranged under separate heads or rubrics; nor, indeed, are the extracts strictly confined to the original contents of the document, but mixed up with additions from a later system of legislation.<sup>33</sup>

The foregoing explanations on the position held by Zeno's building ordinance in the body of laws compiled by Justinian, as well as on the manner in which it has been transposed from its original text, may account for the remarkable appear-

ances which the treatment of the text presents to us on the part of the commentators on the Roman laws. We need only here refer to one important point in Justinian's enactments.<sup>34</sup> That emperor laid it down in express terms,<sup>35</sup> that every doubt, (whether Zeno's law was valid outside also of Constantinople, and was to be preferred to the older and nearly obsolete law on the same subject,) should at once be set aside, and that it should be considered as of universal obligation. It is only in the later declaratory regulation<sup>36</sup> that it is mentioned by way of note or supplement, that the distinct enactment of Zeno's ordinance against the shutting out of the view of the sea by a neighbour's house was only to have effect in Constantinople: a point which is also especially brought forward in the collection of laws<sup>37</sup> subsequent to Justinian. The commentators have not hesitated to view the whole of Zeno's law as Justinian did, namely, as a summary of many single ones of general import, and to distinguish permanent enactments from those of merely local application. But as, according to this method of interpretation, the law in question must remain a closed book to every one, it is no wonder that the *literatur* (or series of commentaries upon this Constitution,)<sup>38</sup> has little else to show than fruitless attempts to approach to the understanding of some peculiarities contained in it of small importance;<sup>39</sup> whilst either nothing at all is said of the import of the entire document,<sup>40</sup> or, if anything, very insufficiently.<sup>41</sup>

Against this mode of interpretation, the most effectual remedy would be, entirely to separate Zeno's law from the legislation of Justinian, and to comment upon it independently of everything else. The direction which should be given to such an inquiry is sufficiently pointed out by certain expressions in the law itself. Zeno, for example, expressly designates his own ordinance as the development or complement of an older ordinance for Constantinople only, enacted by his immediate predecessors. He enlarges especially on the dispositions which refer exclusively to the locality of that capital, and he describes

several of the building arrangements there in use as dependent on the peculiar locality; whilst at the same time he is considered to allude to a mixture of the Greek and Roman style of architecture prevalent in the city. It then becomes the province of the expositor of our law, who would carefully keep in view the object of its author, to place in a just and proper light, first, the course of events which brought about the chief building law, with its relation to other corresponding ordinances of the Roman emperors; and, secondly, he should specially bring forward those peculiarities of Zeno's regulations, which refer exclusively to the local circumstances of the capital of the Byzantine empire, or which were at least produced by them.

#### I.

In the preamble of his law, Zeno premises that both of his own judgment, and in consequence of the reports of the prefects of the city, to whom the ordinance is directed, he is about to publish a comprehensive and general regulation for the building police of the capital of the empire, with the view of putting an end to the various doubts which had arisen in carrying out the corresponding ordinance of his predecessor Leo; and at the same time to combine and complete the separate dispositions of his own earlier enactment on the same subject. The enacting portion of the law itself is in accordance with this preamble; and whilst the two older regulations of Leo I. on building police are repealed by it, those of Zeno are described as still in force; and we are told that the present ordinance is mainly intended to form a comprehensive and declaratory supplement to them;<sup>42</sup> nor is it any contradiction to these premises, that such earlier laws of Leo and Zeno were not admitted into the collection of Justinian's Constitutions; the only conclusion to be drawn from this fact<sup>43</sup> is, that Justinian, after having admitted into his codex the unabridged text of the most recent declaratory regulations of Zeno, thought it would be quite superfluous to adopt also

that which Zeno himself had described as imperfect in its contents, and obscure in expression. There is another point, too, which Zeno has mooted in the Introduction, which deserves notice. The emperor assures the reader that he has taken pains to avoid all strictly legal or forensic expressions in the text of this declaration, and, by the substitution of descriptions intelligible to all, to make it easy for every one to understand of himself the meaning of the several legal formulæ, without having recourse to the instruction of a technical expositor or commentator. Hence we may infer, that a good knowledge of the locality, to which the regulation in question was limited, was of no less importance for the meaning of the terms, than for the understanding of its contents. If now we compare with this the language of Justinian, who, in the explanation he has left us<sup>44</sup> in reference to the extended validity of Zeno's law over the whole Roman empire, has described this very law as a *constitutio, quæ de servitutibus loquitur*, we shall be convinced, not only that the choice of this technical and forensic expression has deranged the historical point of view, which would have enabled us to understand and to appreciate Zeno's plan,<sup>45</sup> but also that even the contemporaries of Justinian could not possibly have derived from it any useful information towards understanding the practical bearing and meaning of the whole regulation.

With a view, then, to make a nearer approach to the understanding of the separate enactments of Zeno's ordinance for subjecting buildings to some public rules of police, we must show how the occasion for the law itself was connected with the history of the origin and the aggrandisement of the capital of the Byzantine empire. The official designation (*felicissima urbs*), which Byzantium bore from its new or second foundation by Constantine, was perfectly well suited to its very favourable geographical position,<sup>46</sup> however inappropriate the term might appear to the frequent visitations to which it was exposed, of earthquakes and conflagrations, by which the ancient city of Constantinople suffered quite as much as its modern successor.<sup>47</sup>



The immediate causes of these destructive fires, and of the devastations which were produced by them, as well as by the earthquakes, were decidedly increased by the peculiar mode in which the city was built; for, in a proportionately cramped space, it contained the largest number of human abodes which it was possible to crowd within it. From the time of the earliest colonists of Byzantium, they had been obliged, in consequence of the plundering inroads of the Thracians, to confine themselves, in laying out the plans of their buildings, to those spots of a territory intersected and occupied by heights of very unequal elevation, which could be most readily fortified against hostile aggressions.<sup>48</sup> The public works, by which the emperors Hadrian and Septimius Severus secured to themselves the gratitude of the Byzantines, had not for their object the extension of the city, but exclusively the supplying it with aqueducts, baths, and other constructions of public utility.<sup>49</sup> Constantine, on the contrary, had in view both the one object and the other. He made room for a larger population, which would necessarily be drawn thither by the removal of the imperial residence, whilst he threw farther out the defensive bulwarks of the city.<sup>50</sup> This operation must have been frequently repeated under his successors.<sup>51</sup> We are informed by the historian Zosimus,<sup>52</sup> that neither Constantine himself nor the succeeding emperors were ever able to provide sufficient room for the central parts, the heart, as it were, of the city, such as was required for the wants of public trade and traffic and for the accommodation of the inhabitants. "Look," he says, "at the buildings crowded together in narrow rows; and where the ground is insufficient for building room, attempts are perpetually being made to gain it from the sea by expensive constructions upon piles. The streets are no less confined than the open spaces within the dwelling-houses, so that the inhabitants feel themselves almost as uncomfortable in their own houses, as when out of doors in the immense press and crowd of persons who are continually passing along the streets."<sup>53</sup> We are presented with a similar

picture of the city in Agathias' description of the great earthquake which visited Byzantium in 557. He says,<sup>54</sup> that immediately on the first shock, notwithstanding the cold of the season and the hour of night, the whole population rushed into the streets and squares. But the open air, within the walls of the city, gave no greater security than if they had remained in their own homes; for those lofty buildings ranged close alongside to each other, in the event of their being thrown down, would have hastened the inevitable fate of the crowds of persons wedged together in endless confusion all along the narrow streets. With this, also, is connected the fact, that when larger public buildings were to be newly built up in Constantinople, as, for example, the construction of the church of St. Sophia under Justinian, the requisite space could only be found by the expensive purchase of many adjoining private houses.<sup>55</sup>

A system of construction so defective converted the capital of the Byzantine empire into a focus of the most calamitous conflagrations, and in a much greater degree than was ever the case with Rome. This also enables us to understand how the measures ordained by the legislative enactments, which were regularly called forth on the occasion of every great conflagration in the imperial residence, were attended with very unsatisfactory results, on account of the peculiar difficulties presented by the situation of the city; or because, when the danger was over, the force of circumstances either led to evasions of the law, or induced the government to make concessions.

The two ordinances of the emperors Arcadius and Honorius, which were addressed in 406 to Æmilianus, the prætor of the city, and which are expressly announced as provisions against the extension of fires,<sup>56</sup> have been pointed out by J. Gottfried<sup>57</sup> as regulations occasioned by the great and destructive conflagration stated to have taken place in that year.<sup>58</sup> These regulations prescribe a more commodious plan of construction, and the use of fire-proof materials for the steps leading to the public porticoes. They prohibit also the walls of private

dwelling-houses from joining on with those of any public building. They enact that, for the future, in all architectural plans, an open space of fifteen feet should be left between public and private buildings. We may presume, also, a similar connection<sup>59</sup> between the building-law of the emperor Leo (to which the explanatory and more comprehensive ordinance of Zeno, which is under consideration, was attached,) and the great conflagration by which Constantinople was laid waste in the year 469. According to the most credible authorities,<sup>60</sup> amongst which we are to reckon the *Metrical Imperial Chronicle* of Ephraim, a production of the beginning of the fourteenth century, and lately discovered by Angelo Mai,<sup>60a</sup> this conflagration, which lasted for four days, and extended from north to south, laid waste the whole of the buildings which covered an area of five stadia long and fifteen wide, and destroyed much property, and treasures of art of inestimable value. The emperor Leo escaped to the suburb of Pera, and took care to secure for the future to this district a greater number of municipal buildings, by removing to it some of the public works.<sup>61</sup> The same chronicler, Ephraim, relates that another calamitous fire, though of smaller extent, but one deeply to be deplored on account of the destruction of the great public library, visited the imperial city under the reign of Zeno.<sup>61a</sup>

The regulations enacted by the laws of Leo for rebuilding the capital are only to be collected from the references to them in that of Zeno; for the former have not been handed down to us either in Justinian's Constitutions, or by any other channel. But the references in Zeno's law require to be very carefully examined and criticized; for it sometimes takes the tone of a mere explanation and extension of that of Leo, and at others gives us the words in an authentic and original form of another and earlier law of Zeno himself, of somewhat similar import, but which is equally lost to us.

The emperor Zeno expressly<sup>62</sup> and particularly attributes to his predecessor, Leo, the prohibition, in the reconstruction of

the houses in Constantinople, to alter their previous form to the prejudice of the neighbours, or to intercept their light. But whilst Zeno himself confirms this prohibition, he thinks it expedient to make this reserve, that as such prohibition is only intended to benefit such neighbours, it may, on their free will and consent, be modified, or entirely laid aside. It must have been also clearly stated in the law of Leo, according to Zeno's version of it,<sup>63</sup> that, by a still earlier ordinance, on the reconstruction of a house destroyed by fire, if such new house was raised to the height of one hundred feet, the owner acquired the right of depriving his neighbour even of the view of the sea. This modification of the law is farther carried out by Zeno, to the effect that any mass of new buildings is also to be thus favoured. When, however, such mass of new buildings, the old ones not having been burned down, is rebuilt, the liberty to deprive the neighbouring houses of their view of the sea by such lofty private structure, can only be assumed on condition that a space a hundred feet in extent, and without any building upon it, shall be left quite free between the new and the adjoining buildings. To this, however, is added the further modification, that the claim of the proprietors of the adjoining plots of ground that their free and uninterrupted view should not be taken from them, should apply exclusively to the habitable parts of these private dwelling-houses, and not to those spaces which were merely appropriated to household purposes; for in respect to these last, nothing more need be observed than the usual legal interval of twelve feet. It is also clear that the habitable part of a house might, by arrangement with the neighbours, and with the free consent of the ground-landlord, be deprived of the right of such free view.

The question—whether the law of the Emperor Leo may have contained express directions in respect to the position or disposition of *mæniana* or *solaria*, will be further examined in a subsequent part of this paper.

The remaining portion of Zeno's ordinance consists of regu-

lations which have for their object, either the explanation of an older law of the same emperor, on the minimum of distance allowed between contiguous private dwellings; or which were sanctioned on this occasion by Zeno, as new and independent enactments for the completion of the regulations of Leo; or they are intended to ensure the efficiency of all the existing building ordinances, whether those of Leo or Zeno. This is done partly by denouncing severe punishments against the violators of the law, partly by the introduction of a simpler and more expeditious process for settling the several private complaints which had been occasioned by the new buildings.

It is to the older law of Zeno that we are to refer those points of the declaratory ordinance we are now treating of, which have for their object the maintenance of a free interval of twelve feet between contiguous private houses.<sup>64</sup> The apparent uncertainty contained in the words of this law, τὸ πλεόν ἢ ἑλκτρὸν δυοκαίδεκα ποδῶν, is set aside by the explanation, that the stated interval of free space was to extend from the foundation to the cornice of the contiguous buildings. He who observed this interval, whether in the renewal of old or in the construction of new buildings, was not to be obstructed in reference to the height of his walls, or the opening of windows, provided he did not shut out his neighbour's house, not including the garden, from the view of the sea. Reference is also made in this document to such limitations and extensions of the right of building, as might pass from the ground proprietor to his neighbours by inheritance or by agreement.<sup>65</sup> Whilst, then, this emperor (Zeno) makes express reference to a copy of the *Δελα νομοθεσία*,<sup>66</sup> he does not mean that his own older law should be understood by that expression, but the regulation of the Emperor Leo. He is not speaking of a corresponding ordinance on the *legitimum spatium*, but on the liberty previously granted to construct windows *ad libitum* in the lofty dwelling-houses which were to be erected.

The following enactments (to which we shall have again to



refer, when we come to the explanation of the several clauses of the law) are to be viewed as new and substantive regulations, to which the attention of Zeno was drawn by the concessions of Leo in favour of those who undertook to build. For example: the precise prescriptions in regard to the plan and elevation of the *mæniana* or *solaria*, and on their fire-proof construction, as also on the use and nature of the steps leading to the upper parts of the buildings;<sup>66</sup> so also the restrictions in reference to the disposition of shops and warehouses where goods were sold, in the intervals of the colonnades in the different squares, or open spaces of the metropolis.<sup>67</sup>

That section in Zeno's law is very carefully compiled, which treats of the punishment or penalty inflicted on those who violate the legal restrictions on construction;<sup>68</sup> and the same may be said of that which treats of the judicial proceedings in cases of private complaints.<sup>69</sup> In the progress of this Essay, we shall have occasion to show the very favourable light in which Zeno's regulations for these objects present themselves, when we compare them with the corresponding ordinances of the earlier or later emperors. One of the characteristics of Zeno's law is, not only that he is anxious to secure the proprietor against the delays of the contractors and others, by means of the official intervention of the prefect of the city, but that, in order to secure the just and impartial treatment of complaints, which might be brought by the suffering neighbours against the proprietor, he has released the jurisdiction of the prefect from the observance of such formalities, as seemed most likely to interfere with a speedy decision, and which tended to encourage chicanery. These regulations are introduced with so much circumspection, that every prejudice is removed which might interfere with the right of both parties to a satisfactory and impartial hearing.

After this general review of the elements on which was based the building legislation, as well of Leo as of Zeno, it should be our object, before we proceed to the explanation of the

principal details in the ordinance of Zeno, to examine preliminarily the following question:—"Where are we to seek for the difference of principle between the two legislative acts? and how far some of the orders or precepts of both the legislators—which apparently clash with the express purport or motive of the law—may be justified by the necessary adoption of certain arrangements, in consequence of the peculiar locality of the capital?"<sup>70</sup>

We can hardly be mistaken if we conclude, from the above-mentioned peculiarities which Zeno adopted from the law of Leo, that, in order to forward the rebuilding of the capital, which had been laid waste by a wide-spreading conflagration, Zeno thought right to offer various advantages to those who were disposed to build, and, therefore, only kept in view the most indispensable provisions against future danger from fire: for it is clear that Zeno, as well in the declaratory portion of his additions to Leo's law, as also in his own independent ordinances which are annexed to that law, decidedly took pains to assign the proper limits to these privileges, and to protect them against probable abuses. Amongst these privileges must certainly be reckoned the permission, by which it was not only allowed to erect houses to the height of 100 feet, but this was also accompanied by other special advantages to the owner. On the other hand, there are a few—but only a few—probable grounds for supposing that there were also in the same law some favourable regulations in respect to the *mæniana*. The raising of the dwellings to the great heights therein mentioned, which could only be possible here and there, on account of the foundations, seems to have been favoured by the terraces on which Constantinople was built, and, indeed, almost to have been rendered unavoidable by the limited space for building within the city walls. It is, therefore, more than probable that the prohibitions<sup>71</sup> enacted by the earlier Roman emperors especially for the city of Rome, against carrying buildings above the height of sixty or seventy feet, was not applied to Constanti-

nople. Moreover, the provision of the old Roman municipal regulations, that a certain extent of ground, unencumbered by any building, was in all cases to be left between adjacent houses for security against fire, appears to have been brought into operation also in Byzantium, and was considerably extended by the edicts of the Christian emperors.<sup>73</sup> We need not, however, suppose that it was intended at Constantinople, more than in Rome, that this insulation of private houses should apply to all the four sides, but merely to those sides not bordering on the public streets: for the descriptions of the peculiar architecture of Constantinople which have been already given,<sup>73</sup> show that the habitations in the lines of the principal streets and squares were erected alongside of each other uninterruptedly.<sup>74</sup> The predecessors of Zeno contented themselves with prohibiting, in express words, the building of any private houses, or the making of any additions to them, in immediate contact with any public edifice; but they enacted no prohibition against the close vicinity of private dwellings.<sup>75</sup> And Zeno himself, in the passage of the law we are treating of, where he enjoins neighbours to preserve the *legitimum spatium* in a bye-street or passage, does not refer to houses ranging alongside of one another, but to such as were placed opposite to or facing one another.<sup>76</sup>

Now, when the Emperor Leo gave to houses which were a hundred feet high the privilege of intercepting from their neighbours the view even of the sea,<sup>77</sup> it is plain that he favoured one rule of local law at the expense of another. The favoured privilege of a free view of the sea is described by Justinian<sup>78</sup> as a local regulation, exclusively calculated for the locality of Constantinople. We must not, however, assign as in any way a motive for this privilege a care for the sanitary state of the city, although, in ancient times, the free passage and current of air were carefully provided for in the disposition of private dwellings.<sup>79</sup> The express words of the Emperors Zeno and Justinian<sup>80</sup> place it beyond a doubt, that the law for leaving

open the view of the sea had reference simply to the personal gratification of the inhabitants. Leo disregarded the favour altogether, the moment he could ensure thereby that houses would be built a hundred feet high. Zeno also confirmed and extended the concession, when he confined his care on the subject to a provision for the separation of the houses of private individuals, when carried to the height alluded to, by a considerable interval of free space from the neighbouring houses behind them.

It is probable, though not absolutely certain, from the corresponding words in the edict of Zeno,<sup>81</sup> that Leo's law also contained special stipulations for the guidance of the building-contractors, in reference to those overhanging and projecting structures appended to dwelling-houses, and which in Rome were known by the names of *mæniana* and *solaria*, used also, with the same meaning, in Constantinople, though sometimes confounded with the *parapetasia*:<sup>82</sup> \* for, in the year 368, Valentinian and Valens had indiscriminately removed all *mæniana* erected in Constantinople, and prohibited them altogether for the future.<sup>83</sup> By a law of the Emperor Arcadius, in 398, this prohibition was extended to all similar buildings in the metropolis coming under the name of *parapetasia*.<sup>84</sup> The subsequent ordinance of Honorius and Theodosius, in 423,<sup>85</sup> concedes the construction of *mæniana*, in cases where a free interval of ten, or, if required, fifteen feet, is reserved when they are erected; but this arrangement is expressly confined to the provinces. On the other hand, Zeno's law, of which we are speaking, treats of the *mæniana* in the capital as of a common circumstance; but it is provided that they shall be constructed of fire-proof materials, and that the

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\* The *Mæniana* may be considered as open balconies, verandas, or loggia; and, indeed, though not generally spelt with diphthong æ, may be considered as being anything that projected from the wall; the *Solaria* were the flat roofs or terraces exposed to the sun; and the *Parapetasia* appear to have been such projecting buildings as were concealed by awnings, lattice-work, or solid enclosure.

proper distance should be secured between them and the adjoining houses.<sup>86</sup> This justifies the supposition, that the law enacted by Theodosius for the provinces had been, in the interval, applied also to the metropolis of the Byzantine empire.

The direct object of Leo's building ordinance, namely, to encourage a disposition to build in the capital so lately reduced to ashes, and to release it from all restrictions not absolutely necessary to provide against future accidents from fire, might have been justified by the pressure of existing circumstances; but we must seek for other causes to comprehend the merit of the subsequent ordinance of the Emperor Zeno. The experience gained since the publication of Leo's building law had led to the conviction, that the extension of the liberty in question, like the limitation of it, in the extent of the *legitimum spatium*, opened a door as well to the groundless encroachments of the owners, as to the litigious reclamations of the neighbours, who pretended to be damaged. Zeno did what he could to put a stop to this source of odious complaints and endless lawsuits; and his address in solving this difficulty deserves to be fully explained. He went direct to the root of the evil, in endeavouring to remove the vagueness of the form and words employed in the compilation of the older laws; and he thoroughly instructed all persons interested therein, how, in laying out a plan for building, they might meet beforehand every future encroachment upon the limits of the ground-plan authorized by the law, and this by means of a kindly understanding with the neighbours who were entitled to interfere. An understanding of this kind could not, indeed, supersede the rights of individuals, any more than restrictions on buildings required by the public interest could be considered as in any manner subject to the private *arrangement* of the neighbours. Zeno, moreover, gives it to be understood, that the weakness of Leo's legislation on this subject consisted in merely enacting prohibitions and concessions, without laying down at the same time any sufficient rules for their practical application. This want of a com-



prehensive system of regulations is fully provided for by the law we are treating of as enacted by Zeno, inasmuch as it prescribes to the competent authorities a precise and definite mode of proceeding for the disputes which might arise out of the schemes and plans for building houses within the walls of Constantinople.<sup>87</sup>

It has been already mentioned that the older ordinances, both of Leo and Zeno, for regulating buildings, gave occasion to various chicaneries, litigious informations, and lawsuits. Zeno had especially shown the extent of this mischief in respect to the inadmissible interpretation which had been given to the words of his own earlier law, *i. e.* τὸ πλέον ἢ ἑλαττον δυοκαίδεκα ποδῶν.<sup>88</sup> This will also apply to what the same emperor has said, in the preface to the ordinance in question, on the necessity of correcting the mal-interpretations of the law of Leo. The same may be said of the edict of Justinian,<sup>89</sup> upon quibbling and vexatious misconstructions given to Zeno's provisions for the encouragement of private buildings, when they were separated from the adjacent houses by an interval of 100 feet. The proprietors had, for instance, taken advantage of this law to deprive their neighbours of the view of the sea, merely by building a wall outside of this interval, without troubling themselves further about the erection of a dwelling-house. Such like infractions or circumventions of the law, which the emperor characterises as a confirmation of the proverbial denomination of neighbours' quarrels, were to cease for the future; and the favour in question could only hold good when proper dwelling houses were *bonâ fide* erected.

On another authority, also, a credible account has come down to us, which leaves no doubt that the litigious disputes of the inhabitants of neighbouring houses in Constantinople were not merely prompted by the peculiar position of the city, but that they had an inexhaustible source in the national character of the inhabitants themselves. Agathias distinctly relates<sup>90</sup> the following circumstances, amongst various others, which occurred

on the occasion of the great earthquake in 557, by which the inhabitants of the capital were for a long time kept in a state of continual alarm. Anthemius of Tralles, whom Justinian invited to Byzantium on account of his distinguished acquirements in mathematics and in mechanics, and who there gave a very remarkable proof of his ability, in the construction of the church of St. Sophia,<sup>91</sup> was, in the beginning of his residence there, on terms of the most intimate friendship with his next neighbour, Zeno, a rhetorician; but they became afterwards bitter enemies, from a cause which has never been accurately explained. It can, however, scarcely be a matter of doubt, that the erection of some new building, or the alteration of an old one in the house of one of the parties, by which the other felt himself aggrieved, either in respect to the view, or some other cause, contributed to their differences, such quarrels amongst neighbours in Constantinople being of daily occurrence. Upon this, Anthemius laid down a series of pipes or conduits under the foundations of his own house, which lay deeper than those of his neighbour, by which he contrived to play a great mass of hot vapour against Zeno's house, which lay on a higher level, in order to frighten him. The scheme did not fail of its effect: his frightened neighbour at first attributed the phenomena produced by it to an earthquake; but after a time, and after other experiments creating optical and acoustic illusions, which were practised against him for the same objects, and which were meant to imitate thunder and lightning, he was no longer in doubt respecting the originator of these extraordinary appearances. He addressed himself to the Emperor, and petitioned him for protection against the ingenious annoyances of his persecutor.

## II.

If we now proceed to consider in detail the contents of Zeno's ordinance, we shall find that some of its enactments are, by the circumstances attending their application, expressly limited to the locality of the metropolis. On the other hand,

in some of these details such local limitation can only be deduced from incidental allusions to the peculiarity of the Greek style of building, and particularly that of Constantinople.

To the first of these classes must be referred the contents of the sixth section of our Constitution, which regulates the architectural plan and elevation of shops in the public squares or open places of the imperial residence. It is there enacted, that the intervals between the columns, which belong to the public colonnades and squares, in those parts of the city which lead from the *Μαίον* to the Capitol, must not be occupied by buildings, partition-walls or enclosures, or other permanent structures. It will only be lawful to place here stalls, or other places of sale, not more than six feet in width and seven in height, so that free access to the street shall be kept open in particular parts of the colonnades. It is at the same time decreed, that all such shops or stalls in this district shall be faced with marble, at least on the outside. In respect to the other parts of the city, it is left to the discretion of the prefect of the city to grant permission for the erection of such shops as he may judge expedient, so as not to interfere with the public convenience. This magistrate is simply instructed, in the granting or in the refusal of such permissions, to proceed impartially, and without distinction of persons.

It is evident, from the foregoing statements, that this favoured district of the city, from its situation and its architectural decoration, must have been a very distinguished quarter of the metropolis of the Byzantine empire. It cannot be necessary to enter into any refutation of those who refer the expression Capitolium to Rome, and change the word *Μαίον* into *Μιλιάριον*, thereby imagining the Miliarium, which stood in the Forum of Rome, and which, from the character of its ornaments, was called Miliarium Aureum.<sup>23</sup> The expression Capitolium is applied not unfrequently to other cities subject to the Roman dominion, sometimes as marking the locality of the public treasury, sometimes the seat of some

learned institute or academy—in both cases following the example of the Roman Capitol, which was as well the seat of the public treasury, as of the public library, and in process of time was used also as the theatre for holding the public exercises in rhetoric or oratory.<sup>95</sup> Thus, a mention of the Capitolium of Carthage, in Africa, occurs in the Roman codex,<sup>94</sup> to designate the spot where the landowners throughout the province of Africa were directed to pay the instalments of their land-tax. In the same manner, also, the Capitolium of Constantinople is spoken of, as being a public building quite distinct from the many imperial palaces which were in the same city. We may especially quote the *Chronicon Alexandrinum*,<sup>96</sup> which tells us, under the year 407, A.D., that the statue of Christ, in the Byzantine Capitol, had been thrown down by a hurricane.<sup>97</sup> We may refer also to an ordinance of the younger Theodosius, of the year 425, which is preserved in the collections of the Theodosian Constitutions;<sup>98</sup> here the Capitol is mentioned as the place in which were delivered the public lectures to the High School in Constantinople; and the lecturers themselves are therein described as *intra Capitolii auditorium constituti*, and *hi qui in Capitolio docere præcepti sunt*.

Nor have we less ample authorities for the mention of a distinct locality in Constantinople, under the name of Μίλιον. We may begin with the reference in Suidas.<sup>99</sup> This reference comprises, under the same denomination, apparently very different objects—partly, *i.e.*, a milestone, corresponding to the *Miliarium Aureum* at Rome, and partly a splendid architectural monument at Constantinople, which contained an allegorical statue of the *Fortuna Urbis*, and the statues of several emperors. This combination of objects is, however, justified by a comparison of the various appropriate or occasional epithets which Codinus gives to the Μίλιον, called by him sometimes μέγalon, and sometimes κορωνίον. He describes it amongst the architectural monuments at Byzantium<sup>100</sup> which

originated with Constantine, as the termination of a large colonnade near the imperial palace, and as one of the remarkable given points, according to which it was convenient to define the extent of the several regions of the city. He speaks also<sup>101</sup> of the sculptured monuments which surrounded the Μίλιον. Then again, of the triumphal arches on the place or *area* of the Μίλιον, the tops of which were decorated with the statues of Constantine and Helena, also with a cross, bound around with a chain, which was considered as the symbol of the inviolability of the city.<sup>102</sup> In the immediate vicinity of this monument Codinus places also the equestrian statues of Trajan and of the younger Theodosius, as well as the statues of some of the members of the family of the Emperor Justin. He mentions also a Basilica, which was built near the Μίλιον.<sup>103</sup> In another passage,<sup>104</sup> it is stated by him that the Emperor Phocas erected a Temple of St. Phocas on the area of the Μίλιον; and close by—namely, on the spot where was formerly an old gate, with a relief of horses for the *cursus publicus*<sup>104a</sup> he placed the image of a biga, from which the spot came afterwards to be called Διππιον. We must, therefore, consider the Μίλιον at Constantinople as a *place* which had its name from certain preparatory arrangements there made for the *cursus publicus*,<sup>105</sup> and containing also several public monuments. Some of these buildings Zosimus<sup>105a</sup> places in the Forum of Constantine; we may therefore look for the *place* of the Μίλιον in this spot. There is nothing contradictory with this in the fact that, according to the authority of the historians,<sup>106</sup> the trophies of a war brought to a successful conclusion, as well as the decapitated heads of traitors, may have been exposed to view on the same place. On the other hand, the proposed change of the words<sup>107</sup> ἀπὸ τοῦ καλουμένου Μιλίου into α. τ. κ. Μιλιαρίον, in the text of Zeno's law, must be decidedly rejected;<sup>108</sup> and it has already been disproved by the best commentators.<sup>108a</sup>

Another question may be asked:—Which district or part of



the city can it have been, which Zeno's ordinance describes as limited by the Capitol and the *Μίλιον*, and as traversed by open colonnades? The answer cannot be long doubtful. This was the intersectional line leading from the fourth to the eighth region, within which were built the two Forums of Constantine and Theodosius, and which, consequently, adjoined those large spaces or squares which were adorned with splendid buildings and fine monuments of art.<sup>109</sup> It can scarcely be required to enter into any justification of the opinion, that for such a distinguished quarter of the city, the admission of public shops within the range of the colonnades could only have been allowed under certain conditions; and these conditions must have been such as to consort with the character of the surrounding neighbourhood without prejudicing trade, whilst of course these restrictions would not have been requisite in the less ornamented regions of the city. It might rather excite our surprise that the same law, which just before<sup>110</sup> had expressly forbidden the appropriation of any space in the public streets or squares to the use of private buildings, should afterwards have permitted the erection of buildings for trade on those very spots, merely placing them under the superintendence of the magistrate. But similar contradictions are frequently to be met with in the most distant and distinct portions of Roman history. The *Herculanean Tables*<sup>111</sup> prohibit, in the most circumstantial and precise language, the occupation of the colonnades and public squares in Rome with private buildings; but this restriction is immediately modified by a stipulation, that every exceptional authorization given for this purpose by the competent officers shall be scrupulously attended to and maintained. The Christian emperors also, who were perpetually renewing these prohibitions against the extension of private houses to the public squares and buildings,<sup>112</sup> nevertheless frequently allude to the shops and stalls erected within the colonnades near the Baths of Zeuxippus in Constantinople; and they enjoin, withal, that the ground-rent, or land-tax,<sup>113</sup> to

be raised on these localities shall be disposed of in favour of the building-fund belonging to the metropolis. Nor does it require any more direct proof, that the shops or magazines for the most costly goods were situated in the most showy parts of the city,<sup>114</sup> and by their rich and splendid decoration, contributed to enhance the gorgeous appearance of the whole city. The difference, however, in respect to the arrangement and the decoration of these shops, which Zeno's law forces on our observation, between the different districts of the metropolis, is, perhaps, further explained by the fact, that during the reign of that emperor, a very great accession of magnificent public works in the principal places of the metropolis took place, owing to the liberality of one Mammianus;<sup>115</sup> and it thereby became necessary to make the prohibition still more stringent against their being disfigured by private buildings. Codinus also informs us,<sup>116</sup> that several public monuments of an earlier time, which encroached upon the public squares in Constantinople without contributing to their beauty, were removed by the Emperor Zeno.

Amongst the particular stipulations of Zeno's ordinance, in which we seem to recognise a combination or confusion of certain architectural arrangements suited to Greek manners and to the locality of the metropolis, with the mode of building specially prevalent in Rome, we must not omit to enumerate the following. In the first place, we may mention the details<sup>117</sup> regarding the different restrictions for regulating the windows which give a free view, or prospect windows, in contradistinction to those which only served for the admission of light, or lumeniferous windows. We are not to conclude from hence, that this description or form of window was first introduced by the imperial edict to which reference is here made. Zeno seems rather to have provided therein against any misinterpretation of a former ordinance of his on the *legitimum spatium*, which gave leave to the proprietor of a house, who had left an interval of twelve feet between him and his neighbours unbuilt upon, to

open in his own wall windows of any form and character. Nor can we refuse to admit that occasions may have occurred in Rome, as well as in Constantinople, for distinguishing between windows constructed for the admission of light, and those which commanded also a prospect or view from them.<sup>118</sup> On the other hand, we are to attribute only to the locality of Constantinople the enactment of Zeno,<sup>119</sup> that in the case of a distance of not more than ten feet between adjacent houses, the rule should be, that only lumeniferous or light-admitting windows should be introduced, and that these must always be at the height of at least six feet above the floor of the room. It is also expressly enjoined, that this distance was to be measured from the real level of the floor, and no false floor (*τὸ καλούμενον ψευδόπατον*) was to be allowed; that is to say, there should be no banquette or raised floor under the windows within the floor of the rooms, which would afford the means of seeing out of the higher windows.<sup>120</sup> This prescription seems to allude to a well-known or common construction in the disposition of Greek dwelling-houses, which served, indeed, to circumvent the purpose of the building laws, but need not in any way have been first called into existence by them. We find likewise in Vitruvius<sup>121</sup> other technical expressions, compounded after the same manner as *ψευδόπατον*, and which always point to some special contrivance, occasioned by the peculiarities of the Greek style of architecture.

We must also place in the same category the enactments in this ordinance of Zeno in regard to the *solaria*.<sup>122</sup> It has already been shown<sup>123</sup> that the Romans clearly distinguished that upper portion of a residence known under the name of *solarium*, which was exposed to the uninterrupted rays of the sun, from the *mæniana*, or buildings projecting from any part of the outer wall of a house, and specially appropriated to the enjoyment of an uninterrupted view. So common were these projecting casements, that Vitruvius describes the painted scene in the comic theatre (or that required for every-day life), as

representing the fronts of houses, with many windows, and projecting *mæniana*.<sup>124</sup> On the other hand, in Constantinople, it does not appear that these appropriations were so precisely<sup>125</sup> observed; for in consequence of the local regulation against the building out their neighbours from the view of the sea, the *solaria* may have also served the purpose of the *mæniana*. Zeno's law enacts that the *solaria* should not be built of wood, but of fire-proof materials, such as were used in the Roman buildings. (Τῷ σχήματι τῶν λεγομένων ῥωμανίστων.) It is at the same time provided, that these *solaria* must be raised to the height of fifteen feet at least above the pavement of the street, and that the stone or wooden pilasters which served as their supports should only be erected in the lateral lanes or passages; nor even there be allowed to stand perpendicularly on the pavement, but were to be inclined towards the wall of the house, so as not to encroach on, or interfere with the public use of the highway. It was also prohibited to construct any access or approach from the street to such solarium. If we are not mistaken, we may here perceive a decided mixture of the elements of the Greek and Roman styles of building. In one passage, the imperial enactment respecting the height of the *mæniana*, and the mode of supporting the *solaria*, proves their identity with the Roman *mæniana*,<sup>126</sup> to which also we are referred by the expression, ῥωμανίστων. But then, again, the mention of an approach specially and immediately leading from the street to the solarium\* reminds us of a custom peculiar to the Greeks. This is the description which Vitruvius<sup>127</sup> gives of the peculiar distribution of the space in a Greek dwelling-house; in which are described the separate passages leading from the principal entrance of the house to certain adjacent portions of it, which were thus put in

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\* When the *Mæniana* consisted of buildings covered with a pergula, and exposed to the sun, they would acquire the name of *Solaria*; and when the *Solaria*, or terraces on the roof, were enclosed in at the sides, and made to project over the wall, they would obtain the name of *Mæniana*; and thus there would be a constant confusion between these terms.

immediate communication with the street. The object which the architect has in his eye therein, namely, to provide for the accommodation and convenience of the guests who were lodging in the house, has, indeed, in itself no immediate connexion with the solaria. But still less can we refer this arrangement to an imitation of the custom in Rome for providing approaches to the *cænacula* by steps from the street.<sup>128</sup> For without taking into consideration the difference between the *solaria* and the *cænacula*, the ordinance we are discussing does not treat of a flight of steps opening merely toward the street, but of steps quite out of the house, and leading down from the solaria\* into the street. It was these last only which Zeno attempted to regulate, as constructions which narrowed the gangway, and increased the danger of fire. Finally, with regard to the enactment of Zeno respecting the support of the solaria by slanting pillars, it must not be overlooked that this mode of construction still exists in Constantinople, and in the suburbs of that city.

Something still remains to be added, on the punishment which the Emperor imposed on those, who transgressed the prescribed regulation respecting the architectural disposition of the *mæniana*.<sup>129</sup> The illegal structure was to be demolished or *pulled down*, and the ground-landlord was to pay a fine of twelve pounds of gold. Similar punishments awaited the architect, as well as the contractor for the work, and the superintendent; and this last, if unable to pay the fine, was visited also with corporal punishment and banishment. The transgression of the prohibition of Justinian, which we have before alluded to,<sup>130</sup> namely, the depriving a neighbour of his view of the sea by a single wall within the legitimate interval, was also visited by this Emperor with the forfeiture of ten pounds' weight of gold. He added, however, a peculiar enactment for the

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\* It appears probable, from the frequent interchange of the words *Solarium* and *Menianum*, that the steps here referred to gave access to the *mæniana*; as it would be contrary to the universal practice of the East, for steps to lead up to the roofs of the houses.



application of these fines, and they were to be handed over to the theatrical fund, which was under the administration of the prefect of the city.

The double purpose of the penal enactment of Zeno, that is, as well with a view to the immediate setting aside of such architectural projects as were contrary to law, as to the levying of the penalty incurred by the offenders, is not expressed with the same precision, or in the same decisive language, in the former precedents of the building laws of the Romans which have been handed down to us. Thus, for example, in the Table of Heraclea a power is purely and absolutely placed in the hands of those officers charged with the management of the city police, to remove all unlawful hindrances and nuisances created by buildings on the open *places* and streets of Rome, and to inflict the legal penalties on the offenders;<sup>131</sup> and the activity of the officers was ensured by the authority or privilege of the citizens to denounce all such violations of the law to the superior magistrate.<sup>132</sup> And in later times this was rendered more perfect by the intervention of the public prosecutor.<sup>133</sup> In the prohibition to sell to another the right or obligation to pull down houses, or to apply architectural ornaments to the decoration of the buildings of another city, the Roman laws<sup>134</sup> mainly point to a penalty to be imposed on its infraction—this being the most efficient means of preventing the illegal act in question, *i. e.*, the violation of a former Building Act; whereas, in other cases in which, without competent authority, any private scheme had been carried into execution on a ground and soil belonging to the public, all the classic jurists,<sup>135</sup> as well as the constitutional laws of the emperors,<sup>136</sup> prove that the immediate and inevitable consequence of such transgression of the law was the removal of the projected nuisance, and the replacing of everything in its former state.

## NOTES.

<sup>1</sup> viii. 10, De *Ædificiis Privatis*. <sup>2</sup> viii. 12, De *Operibus Publicis*. <sup>3</sup> xv. i. *id.*

<sup>4</sup> In the Ottoboni MS. of the *Lex Rom. Burgundion.* tit. xv., we read as follows: De servitute luminis, vel æris, similiter constitutum est, ut inter privatorum fabricas x. pedes, inter publicas xv. dimittantur, secundum legem Theodosiani, lib. iv. sub titulo, "De *Ædificiis Privatis et Publicis*." Amaduzzi (in his edition of the LL. Novellæ Anecd. p. 205, not. 14, Rom. 1767, F.) has concluded from this citation, that Gothofred must be mistaken in his attempt to replace the lost section (De *Ædificiis Privatis*) at the conclusion of the fourth book of the Theodosian Collection of Constitutions. The same objection was afterwards made by Wenck, in the edition of the libb. v. prior. Theod. C. p. 269, not. y, Lips. 1825-8. There are, notwithstanding, some strong grounds in favour of Gothofred's arrangement, which is supported also by G. Hänel, in his edition of the Theodos. Cod. iv. 24. Compare also Haubold's Exercitation. Vitruvian. Spec. II. in f. (in Opuscul. t. ii. p. 425, not. f.)

<sup>5</sup> The ninth chapter of the Codex Just. De *Ædific. Priv.* 8, 10, has evidently crept out of the 46th chapter of the Codex Theodos. C. xv. 1, De *Operib. Publ.* But for the other Constitutions of the same titulus, which do not coincide with the time of Theodosius II., their origin can only be sought for in the lost section of the Theodosian Collection, which has already been alluded to.

<sup>6</sup> The address of this law has lately been well made out by E. Zachariæ, in his edition of the Prochiron Impp. Basilii, &c., p. 318, Heidelb. 1837, 8°, on the authority of a MS. in the Bodleian library; on the same authority, the judgment which had been passed as to the name of the prefect of the city, (*Ἀδαμάντιος*), on the testimony of a MS., is further strengthened. (See Pet. et Franc. Pithœi Observation. ad Cod. et Novell. Cod. viii. 10, p. 384, Par. 1689, F.; Spangenberg's edit. of the Cod. Just. l. l. and the edit. of Hermann, p. 524.) The reading in Justinian's c. 13. Cod. 8, 10, "Constitutio Zenonis div. mem. ad Amantium Pf. v. Scripta," which is taken from the Recensio Bononiensis, rests on a very pardonable mistake. For during the period of the Christian emperors, the name of Amantius much more frequently occurs amongst the higher officials than that of Adamantius. Compare the Fasti Consulares; the Ecclesiastical History of Evagrius, iv. 2; the Chronicon Marcellinus, p. 59, Lutet. 1619, 8°; the Chronicon Alexandrin. p. 763, ed. Raderi Monac. 1615, 4°, and Gothofred's Comment. on the Codex of Theodosius. Prosopograph. C. Th. v. Amantius.

<sup>7</sup> These are sufficient grounds to do away with the conjecture, that there might have been here what might be called a *bilinguis constitutio*. On the Constitutions of this kind under the later emperors, compare Biener's Revision of the Just. Cod. sec. 98 seq. Berlin, 1838, 8°, and the Author's Civil Law Treatises, vol. i. p. 57. Ibid. 1820, 8°.

<sup>8</sup> c. 13, l. l. 8, 10.

<sup>9</sup> c. 12, sec. 2, 4, ib. 8, 10.

<sup>10</sup> See note 8.

<sup>11</sup> Nov. 53. On the other hand the Nov. 165, corresponding to this in the contents, is not one of Justinian's laws, but a portion of the so-called *Eparchica*. Compare Biener's History of the Novellæ of Justinian, p. 452 seq. 476, Berl. 1824, 8°.

<sup>12</sup> See C. Witte on the *Leges Restitutæ* of Justinian, Cod. S. 20, p. 206 seq. Bresl. 1830, 8°: Biener's l. l. p. 551 seq. 617 seq. and in the additions to the Revision of Just. Codex, p. 163 seq.

<sup>13</sup> Compare the section: Description of the most important MSS. of the Novellæ, in Biener's History of the Novellæ, Append. v. p. 551 seq.

<sup>14</sup> Pithoüs l. l. p. 384 seq. See above, note 6.

<sup>15</sup> Compare Biener, l. l. p. 385-401, and in the additions to the Revision, p. 164.

<sup>16</sup> Zachariä l. l. p. 315 seq. See note 6.

<sup>17</sup> Ibid. p. 209 seq.

<sup>18</sup> *Basilicorum*, lviii. 11, c. 12, lviii. 12, c. 12.

<sup>19</sup> In the *Manuale Legum*, II. 4. (Compare the edition by O. Reiz, in the supplemental volume of the *Thesaurus Nov. Jur. Civ. et Can.* by Meerman.)

<sup>20</sup> Compare the Rubric to sec. 12 of the *Manuale Legum*, l. l. <sup>21</sup> Id. sec. 42.

<sup>22</sup> Id. sec. 51.

<sup>23</sup> Id. sec. 49. Compare Vitruvius de *Architectura*, vii. 5.

<sup>24</sup> See above, note 18.

<sup>25</sup> See note 16.

<sup>26</sup> C. Witte, l. l. (Note 12.)

<sup>27</sup> Witte sets out with the supposition (p. 20), that the text which we have in the printed editions of Justinian's Constitutions is much too detailed for the object of the collection: accordingly, he considers this text to be the original of the law. On the other hand, at p. 207, he concludes, from the deviations from that text in Harmenopulus, that the reporter may have made use of a more perfect original copy of Zeno's Ordinance, which may have found its way into the *Eparchica* (Regulations of Police). The passage, however, in Harmenopulus, (ib. sec. 46,) to which special reference is made, is not in any degree the origin of Zeno's law, but an extraneous addition from other sources.

<sup>28</sup> See Biener's additions, p. 164, and Herrmann, *ibid.* p. 519, not. a. See note 6.

<sup>29</sup> Compare note 8.

<sup>30</sup> See note 11.

<sup>31</sup> Compare Novellæ, 165, (note 11); Harmenopulus, *ibid.* ii. 4, sec. 46, and Theodorus Hermopolit. Nov. 165, p. 165, cited in the following note.

<sup>32</sup> Athanasii Scholast. epitome Novellar. Justiniani, tit. 21, c. 2, (in G. E. Heinbach's *Anecdota*, t. i. p. 180, Lips. 1838, 4°) and Theodori Hermopolitani *Breviarium Novellar. Justin. Nov.* 63, (in E. Zachariä's *Anecdota*, p. 68, Lips. 1843, 4°.)

<sup>33</sup> Compare Zachariä, l. l. p. 246, cap. 3. De *Edictis Præfectorum Pr. quæ supersunt*; and p. 266 seq. *Edicta Præfectorum, Pr. Harmenopulus, ibid.*

<sup>34</sup> We need not pause as to the other question, whether the modern common-law praxis can take cognizance of the contents of c. 12, sec. 8, 10, although this, being a *Lex Restituta*, does not belong to the received code—whereas, the received law of Justinian, (that is, c. 13, id. 8, 10,) of which there is no doubt, and by which Zeno's ordinance was confirmed in its fullest extent, must remain inapplicable and unintelligible, as a *referens sine relato*, unless the practical lawyer refers to Zeno's text. Compare Pfeiffer's *Practical Conclusions*, vol. iv. No. 1.

<sup>35</sup> c. 13, l. l. 8, 10.

<sup>36</sup> Nov. 63.

<sup>37</sup> Prochiron *Basilii*, etc. tit. 38, 5, p. 210. (See above, note 6.) *Basilicorum*, lviii. 11, c. 12. Harmenopulus, l. l. ii. 4, sec. 46. Compare Jo. Luencavius *Notator. lib. ii.* (in Otto's *Thesaur.* t. iii. p. 1548.)

<sup>38</sup> Haubold, in his *Manuale Basilicorum*, gives a view of books illustrative of Zeno's law, *Cod. Just.* viii. 10, c. 12, c. 13, and much more completely in *Exercitationes Vitruvianæ*, l. c. p. 425. (See above, note 4.) The several works on the building regulations of Rome are given by Treckell, in his *Observations on the Select Antiquities of Brisson*, l. (*Opera Minora Brissonii*, ed. Treckell, p. 1, Lyons; B 1747, F.); and in Haubold's *Institution*. J. R. Hist. Dogmat. iii. 3, sec. 164, p. 109, of Otto's edition. Unfortunately, we have not had it in our power to compare the treatises of A. Federigi, which are there quoted (*Diss. in quâ L. 12, De Ædif. Privat. explicatur*, Neap. 1766-1770,) with those of N. Carletti, (*La Costituzione del Imp. Zenone*, Neap. 1783, 8°), which treat exclusively of Zeno's Ordinance, both in a juristical and an architectural point of view. The judgment given of these treatises by Griesinger, (*De Servitute Luminum*, p. 167, Lips. 1819, 8°), does not bear the stamp of his having very carefully examined their contents. This is not the case with that of Haubold, l. c. This last writer praises but moderately the work of Federigi, and describes Carletti as having copied from him.

<sup>39</sup> Thus, for example, in the concise observations of the brothers Pithœi, (see above, note 6,) and in the Commentators on Harmenopulus. (See above, Reiz. loc. cit. and Abr. Havercamp's *Specimen Jurid. Inaug. ad C. Harmenopuli promptuar.* ii. 4, sec. 34 in G. Öhrich's *Thesaur. Diss. Jurid. Belg.* vol. 1, t. 3, p. 45 seq.)

<sup>40</sup> *e. g.* in G. Pancirolus' *Thesaur. Var. Lection.* II. p. 228. In Heineccius' *Jurisprud. Rom. et Att. t. ii.* p. 1350.

<sup>41</sup> Westphal (*De Libertate et Servitutib. Prædiorum*, ii. 7, sec. 180 seq. p. 195 seq. Lips. 1773, 8°); this author is said by Witte, loc. cit. p. 208, to be the only good editor of Zeno's law, but by following his own mode, of acting merely as a compiler, he has given us nothing like an original inquiry into the subject.

<sup>42</sup> c. 12, sec. 1, 2, 4, h. t. 8, 10. <sup>43</sup> Compare note 8. <sup>44</sup> c. 13, id. 8, 10.

<sup>45</sup> This clearly results from the list of works illustrative of Zeno's law; see note 38 seq. <sup>46</sup> Compare Procopius de *Ædificiis*, i. 5.

<sup>47</sup> A long list of these calamitous events might be made from the *Chronicles*. A specimen from the time of Constantine to that of Justinian will suffice; local earthquakes of considerable importance are reported in the years 396, 407, 417, 422, 423, 447, 480, 487, 533, 557. See the *Chronicon* of Marcellinus, p. 9 seq. 27, 40, 52. Lutet. 1619, 8°; the *Chronicon* of Alexandria, pp. 714, 718, 726, 734, 738, 758, 786, ed. M. Raderi. Monac. 1615. 4; the *Histories* of Agathias, v. 3. Compare Gibbon's *History of the Decline, &c.*, cap. 43. ad fin. Slighter volcanic phenomena, which, however, were very destructive in the capital of the empire, and gave occasion to the foundation of several penance-days in the church, may be passed over; as, for example, the copious shower of ashes in 472, which coincided with a remarkable eruption of Vesuvius. (Marcellini *Chronicon* p. 37; *Chronicon Alexandr.* p. 748.) The less extensive conflagrations were those of the years 446, 448, 491, 498, 507, 509, 510. Marcellin. l. cit. pp. 27, 28, 44, 50, 51. *Chronicon Alexandr.* p. 760. The most destructive belong to the years 404, 406, 407, 433, 465, 469, 532. (Marcellin. loc. cit. p. 13 seq. 23, 63 seq. *Chronicon Alexandr.* pp. 714, 716, 728, 744, 748, 778.)

<sup>48</sup> Codinus de *Signis Constantinopolitanis*, p. 51 seq. The same, *De Ædific. Constantinopolitanis*, p. 84 seq. Becker's ed. Bonn, 1848, 8vo. *Chronicon Alexandr.*

- p. 618 seq. Du Cange, *Constantinopolis Christiana*, i. p. 16, (in the Appendix to his *Histor. Byzant.* Lutet. 1618. F.) Gibbon, ch. 17.
- <sup>49</sup> Codinus de Origin. C-pol. p. 12 seq. ed. Becker. *Chronic. Alexandr.* pp. 662, 664.
- <sup>50</sup> Du Cange, loc. l. p. 21.
- <sup>51</sup> Id. p. 23 seq. Codinus, l. l. p. 15 seq. Zosimus *Histor.* ii. 30 seq.
- <sup>52</sup> Du Cange, p. 37 seq. Codinus de Formâ et Amb. Urbis C-pol. p. 26. Idem de *Ædific. C-polit.* in init. p. 71. seq.
- <sup>53</sup> *Histor.* ii. 30 seq. 35 seq.
- <sup>54</sup> We are here strikingly reminded of the descriptions of the locality of the more modern city. Compare extract of the description by the American traveller, N. P. Willis, in the *Magazine of Foreign Literature*, 1843, N. 77 seq.
- <sup>55</sup> *Historiar.* v. 3.
- <sup>56</sup> Codinus de S. Sophia, p. 132 seq. ed. Becker.
- <sup>57</sup> Theod. Cod. xv. i. c. 45, c. 46, de Operibus Pub. (Just. Cod. c. 9, De *Ædific. Priv.* 8, 10.)
- <sup>58</sup> See his Comment. in Theod. Cod. l. l.
- <sup>59</sup> See above, note 47.
- <sup>60</sup> This has already been pointed out by G. Panciroli, loc. cit. (See above, n. 40.)
- <sup>61</sup> See Evagrii Scholast. *Ecclesiast. Histor.* ii. 18. Compare Du Cange, l. l. lib. i. p. 66, and Gibbon, loc. cit.
- <sup>62</sup> In the *Nova Collectio Scriptorum Veterum*, t. iii. p. vii. seq. 24. Rom. 1828, 4°.
- <sup>63</sup> *Chronic. Alexandr.* p. 748. The formal concession of civic or municipal rights to Pera, as well as its connexion with the city, were first granted by Justinian. Compare the last cited authority, p. 774, with Du Cange, l. l. lib. i. p. 66 seq.
- <sup>64</sup> loc. cit. p. 26.
- <sup>65</sup> c. 12, sec. i. Compare pr. C. h. t. 8, 10.
- <sup>66</sup> c. 12, sec. 4, *ibid.* 8, 10. The expression used in this document, *ἐν δὲ τοῖς κρητοῖς νόμοις*, in accordance with the reference immediately following to houses consumed by fire, can only point to the law of Leo, and not to the older ordinance of Zeno, spoken of in the second sec. of the same.
- <sup>67</sup> c. 12, sec. 2, 3, *ibid.* 8, 10. On the relation of this injunction of Zeno to the ordinances of earlier emperors bearing the same appellation, compare the list of works regarding the building laws of Rome, referred to in note 38.
- <sup>68</sup> c. 12, sec. 2, *ibid.* 8, 10.
- <sup>69</sup> c. 12, sec. 5, *ibid.*
- <sup>70</sup> c. 12, sec. 6, *ibid.*
- <sup>71</sup> c. 12, sec. 5, l. 1.
- <sup>72</sup> c. 12, sec. 7, 8, loc. cit. 8, 10.
- <sup>73</sup> The commentators on Justinian's Jurisprudence, who make mention of Zeno's ordinance, readily pass their judgment on its real object; we entertain, however, some doubts, although the purport of this enactment may in fact be in conformity with the expression of Greisinger, loc. cit. p. 167, (see note 38,) whether the emperor had specially in view to restrict the right of house-owners, to construct on their own walls prospect or look-out windows, commanding a view of their neighbours' property.
- <sup>74</sup> Compare the list of works in note 38.
- <sup>75</sup> *Id.*
- <sup>76</sup> See notes 52 and 54.
- <sup>77</sup> On this mode of building, compare Haubold's *Exercitation.* Vitruv. p. 395 seq. 406, 410, 440 seq. (See note 4.)
- <sup>78</sup> Theod. Cod. xv. i. c. 39, c. 46, c. 47. De Opp. Public. J. Gothofredus in *Comm. ad l. l. Ammianus Marcellin.* xxvii. 9, sec. 10.
- <sup>79</sup> c. 42, secs. 3, 5, h. t. 8, 10.
- <sup>80</sup> Compare note 63.
- <sup>81</sup> Nov. 63.
- <sup>82</sup> Compare Vitruvius de *Architect.* v. 1, 7.
- <sup>83</sup> c. 12, secs. 2, 4. *Ibid.* 8, 10. Nov. 63, *Præf.*
- <sup>84</sup> c. 12, sec. 5, loc. cit. 8, 10.
- <sup>85</sup> Com. the Author's *Manuale Latinitatis*, v. *Manianum, Parapetasia, Solarium.*



<sup>83</sup> Ammian. Marcel. l. cit.: Namque et maniana sustulit omnia, fabricari Romæ priscis quoque vetita legibus; et discrevit ab ædibus sacris privatorum parietes iisdem inverecunde connexos. Compare Valerius and the other commentators on this passage. <sup>84</sup> Theod. Cod. l. l. c. 39. <sup>85</sup> Just. Cod. c. 11. l. l. 8, 10.

<sup>86</sup> See note 82.

<sup>87</sup> See note 69.

<sup>88</sup> See note 64.

<sup>89</sup> Nov. 63.

<sup>90</sup> Historiar. V. 6, 7, 8. Gibbon's objections (chap. 40) to this narrative of the historian are rather calculated to support its credibility; for though many throw a doubt over the problems said to have been solved by Anthemius the mechanician, Gibbon himself allows that this is confirmed by the improvements introduced into the mechanical contrivances of our own times.

<sup>91</sup> Compare Procopius de Ædific. I. 1.

<sup>92</sup> Compare Spangenberg, in the Göttingen edition of the Corpus Jur. Civ. and the Codex Const. viii. 10, c. 12, sec. 6, note 61.

<sup>93</sup> Compare J. Gothofredus in Comm. ad Theod. Cod. xiv. 9, c. 3, and J. C. F. Bähr's History of Roman Literature, sec. 14 b, p. 39 of the second edition, Carlsr. 1832, 8vo. <sup>94</sup> Theod. Cod. xi. 1, c. 34, de Annona et Tribut.

<sup>95</sup> Compare Du Cange, l. l. lib. 2, p. 112 seq. 149. (See note 48.) <sup>96</sup> Loc. cit. p. 714.

<sup>97</sup> Codinus, de Ædific. C-politan. p. 76 seq. 83, ed. Becker, (compare Procopius, l. l. i. 10,) places a brazen statue of this description, and set up by Constantine, in the χαλκή: this building, however, formed a part only of the great Imperial palace. Compare Gibbon, loc. cit.

<sup>98</sup> Theod. Cod. xiv. 9, c. 3, de Studiis Liberalibus Urbis Rom.

<sup>99</sup> Μίλιον. v. Στάδιον.

<sup>100</sup> De Originibus C-polit. p. 22. De Formâ et Amb. C-pol. p. 25.

<sup>101</sup> De Signis C-polit. pp. 35, 40, 69 seq. De Ædific. C-polit. pp. 101, 103.

Compare Incerti Auctoris enarrat. Chronograph. (at the end of Becker's edition of Codinus.)

<sup>102</sup> This cross was substituted for the car of the sun and the statue of Fortuna Urbis, which had previously occupied this site. <sup>103</sup> De Signis C-polit. p. 38 seq. 69.

<sup>104</sup> Ibidem, pp. 37 seq., 51. Compare the notes of Lambeccius, ib. p. 237, Becker.

<sup>104a</sup> This is probably the same ancient gate on the site of which Constantine, in extending the walls which surrounded the new city, constructed the splendid forum, which was called after him. Compare Zosimus, Historiar. ii. 30 seq.

<sup>105</sup> We need not here refer to the more recent meaning of the word μίλιον, which is synonymous with μιλιάρησιον, and which occurs on a small coin. (Compare Codinus de S. Sophia, p. 136 seq. ed. Beck. Du Cange's Glossary Med. et Infim. Græcit. h. v. Veteres Gloss. varb. Jur. v. Μιλιάρησιον. In Otto's Thesaurus Jur. t. iii. p. 1764.) Compare also the Journal of the History of Law, vol. xii. N. i. p. 12. <sup>106a</sup> Loc. cit.

<sup>106</sup> The several passages of the Byzantine Historians are collected by Pithæus, loc. cit. and in Du Cange's C-polis Christiana, lib. i. pp. 72, 118 seq. See notes 6 and 48.

<sup>107</sup> The meaning of Μιλιάρησιον does not exactly correspond to the Latin expression Miliarium. See Du Cange's Gloss. Med. et Inf. Græcitatis, h. v.

<sup>108</sup> e. g. Pithæus and Herrmann, loc. cit. (See note 6.)

<sup>108a</sup> The criticism might be dispensed with, as the Miliarium Aureum in Rome is called by Dio Cassius, Histor. liv. 8. τὸ χρυσοῦν μίλιον.

<sup>109</sup> Codinus de Orig. C-polit. p. 15, 22; de Signis C-polit. p. 41. Procop. de *Ædific.* i. 10. Compare Du Cange, C-pol. Christ. lib. i. p. 64 seq. 70 seq.

<sup>110</sup> c. 12 sec. 3. h. b. 8, 10.

<sup>111</sup> Aer. Britan. Lin. 68 seq. Compare the Author's Treatise on the Civil Law vol. 2, p. 296 seq. 307 seq.

<sup>112</sup> Theod. Cod. xv. 1, c. 22, c. 35: de Opp. Pub. Just. Cod. c. 20, c. 21. ib. 8, 12.

<sup>113</sup> Theod. Cod. loc. cit. c. 52. Compare J. Gothofredus in Comm. ib.

<sup>114</sup> See Du Cange C-polis. Christ. lib. 2, p. 109 seq.

<sup>115</sup> Evagrius, loc. cit. iii. 28.

<sup>116</sup> De Signis C-politan. pp. 41, 46.

<sup>117</sup> c. 12. secs. 2, 3, h. t. 8, 10.

<sup>118</sup> Compare Cujacius, Obs. xiii. 30. The careful distinction between *lumina* and *prospectus*, well observed in the language of the Roman jurists, is known to all. Fr. 16, Diss. de S. P. V. 8, 2. Compare the Author's *Manuale Latinit. v. Lumen*, sec. 1, A. v. *Prospectus*, sec. 1.

<sup>119</sup> c. 12, sec. 3, ib. 8, 10. Compare Haverkamp, loc. cit. p. 53. See note 39.

<sup>120</sup> Harmenopolus, l. i. ii. 4, sec. 55, and the commentators on the passage. (Note 174 of the edition cited in note 19.)

<sup>121</sup> loc. cit. ii. 8 (where the author is speaking of the *pseudisodomum*, or stone walls built in unequal layers), and iii. 2, iv. 7, (where mention is made of the pseudo-dipteros and pseudoperipteros.) Compare the commentators on these passages, e. g. A. Rode in his edition of Vitruvius, Berlin, 1800, 4°. Compare also Gloss. Placidi Grammat. (in A. Maii Collect. Auctor. Classic. t. iii. p. 495, Rom. 1831, 8°) v. *Pseudothyrum*.

<sup>122</sup> c. 12, sec. 5, eod. tit. 8, 10.

<sup>123</sup> See note 81. Compare Festus. v. *Maniana*; Isidor. Origin. xv. 3; Veter. Gloss. Verbor. Jur. v. *Σωλάριον*. (Otto's Thesaur. Jur. iii. p. 1806.)

<sup>124</sup> loc. cit. v. 7.

<sup>125</sup> Compare Cujacius Obs. i. 30, xiii. 30.

<sup>126</sup> In the Commentary of Asconius on Cicero's *Divinat.* in Cæcil. c. 16, on the origin of the *maniana*, we read the following description:—"Exceperat jus sibi unius columnæ, (sc. Mænius,) super quam tectum projiceret ex provolantibus tabulatis, unde ipse et posteri ejus spectare munus gladiatorum possent, quod etiam tum in foro dabatur." Compare Schol. ad Cic. p. Sextio, c. 58, sect. 4. (In A. Maii *Classicor. Auctor. e Vatic. Codd. editor. t. ii. p. 152*, Rom. 1828, 8°.)

<sup>127</sup> Loc. cit. vi. 10.

<sup>128</sup> Comp. E. Otto de Tutela Viarum, iii. 5, p. 481 seq.; Trajecti ad Rh. 1731, 8°; Haubold, l. i. p. 442. See note 74.

<sup>129</sup> c. 12, sec. 5, l. 8, 10.

<sup>130</sup> Nov. 63, c. 1. Compare note 89 seq.

<sup>131</sup> Compare the Author's Treatises on Civil Law, vol. ii. p. 295 seq.

<sup>132</sup> Fr. i. sec. 14, 16, 17; Diss. de Oper. Novi Nunciat. 39, 1. Compare J. Rävardus, *Conjectan.* iii. 12.

<sup>133</sup> Fr. 48, Dias. eod. 39, 1. Compare Fr. 1, pr. de Jure Fisci, 49, 14.

<sup>134</sup> Fr. 52, Diss. de Contr. emt. 18, 1; Fr. 41, sec. 1 seq. Diss. de Legat. 1, (30.) Compare the Author's *Scriptores Histor.* Aug. p. 152 seq. Leips. 1842, 8°.

<sup>135</sup> Fr. 11, sec. 14 Diss. de Legat. 3, (32.)

<sup>136</sup> Theod. Cod. xv. 1, c. 22, c. 25, c. 38 seq. c. 46 seq. De Opp. Pub.

## A COLLECTION OF SOME OF THE BUILDING LAWS OF THE ROMAN EMPIRE.

(JUSTINIANI CODICIS LIB. VIII.)\*

### TIT. X. ON PRIVATE BUILDINGS.

1. *On Baths.* Severus and Antoninus, Imp. AA. to Taurus.—You are hereby empowered to build the bath, as you desire, and raise a building over it; but you must observe the same form which is prescribed for others who are allowed to build over a bath: that is, you must raise it upon arches, and it must be itself arched; nor must you exceed the usual height. P.P. (without date or consulship.)

2. *On the Non-destruction of Buildings.* Alexander, Imp. A. to Diogenes.—It is already prohibited, by an edict of the blessed Emperor Vespasian, and by a decree of the senate, to pull down buildings, and carry away the blocks of marble.† But an exception is made in favour of transferring such materials from one house to another. Yet it is not lawful even for proprietors so to conduct such removals, that the public appearance should be deteriorated by the demolition of whole buildings. P.P. 11 kal. Jan. Alexander, A. Cons. 223.

3. *On Ruined Buildings.* The same A. to Evocatus.—Whether it be allowable in the case of a whole house tumbling down, not to build it up again in the same form, but to convert it into a garden, and whether this may be done with the consent, as well of the magistrates offering no opposition, as of the neighbours;—Let the Præses take cognizance of the case; and when he has ascertained the practice of the town in disputes of this kind, let him order what is right. P.P. 7 kal. Apr. Julian. (2.) and Crispin. Cons. 225.

4. *On Buildings in common.* Philip. Imp. A. and Philip. C. to Victor.—If, as you submit to me, the co-proprietor of a building refuse to contribute his proportion of expense to its repair, you will not necessarily require any extraordinary aid. For if you complete the buildings at your own sole expense, and his proportion, together with interest, shall not have been reimbursed to you within four months after it has been demanded, or if the said co-proprietor should in any manner have prevented this from being done, you will be entitled to claim the right of property over the whole, or you will obtain it according to the precedent of ancient usage. P.P. 4 kal. Apr. Philip. A. and Titian. Cons. 246.

5. *On Baths built on joint Land.* Diocletian and Maximian, Imp. AA. and CC. to Octavius.—If he against whom you petition, being already cognizant that a part of the ground belongs to you, shall have attempted, not as your partner or colleague, and as therefore sharing in his anxiety for a work in which you are both interested, to restore the substantial construction of the baths, not with the view of receiving from you your portion of the expense, but that he may seize upon the whole property, and re-construct on his own account the building which has fallen down, the new structures which are thus erected on the ground of another person shall be forfeited to the proprietor of the ground, and the expense

\* These Imperial Laws, of which an English version is now appended to H. E. Dirksen's paper, by the Translator, do not form a part of the original work. The titles &c. are taken from Gothofred's *Corpus Juris*.

† (of which they are constructed, with a view to trade and profit.)

incurred for this iniquitous purpose need not be repaid to him. The Præses of the province, as the mindful guardian of the public law, the decree of the blessed Hadrian being obsolete,\* will take care that the enactments of the law are observed in settling the dispute. P.P. 4 and 3 non. Oct. AA. Conss. 290.

6. *On the Removal of Marbles, &c.* Constantine, Imp. A. to Elpidius, Vicegerent, Prefect of the Province.—If any one after the passing of this law shall remove into the country, from the plundered city, any ornaments, (i. e. marbles or columns,) he shall lose the estate which he has thus enriched. But if any one should be desirous to remove from his own house in any one city to his own house in any other, the marbles or columns from walls in a falling state, as such an operation is likely to tend in a double manner to the decoration of the public property, he may freely do it. Power may also be given to transfer ornaments of this kind from property in one part† to another; although such removal should take place through walls, or though the objects be carried through the midst of the city—with this restriction, however, that that only which has been brought into the city be exported from it. Given at Viminacium, 6 kal. Jan. Crispus (3.) and Constantine (3.) Conss. 321.

7. *On the Removal of Marbles, &c.* Julian, Imp. A. to Vitianus, the Vicar of Africa.—It shall not be lawful for any one to take away‡, or remove from, any of the provinces, columns or statues, of whatever material they may be. Given, 6 kal. Nov. Julian. A. (4.) and Salustius, Conss. 363.

8. *On the Duties of the Curiales and non-Curiales.* Valens, Gratian, and Valentin II. Imppp. AAA. to Modestus, Prefect of the Province.—Be it enacted, that the curiales of the several cities shall be obliged, even against their will, to repair the houses which were formerly within such cities, or to rebuild them anew, it being their duty ever to discharge the public offices there, and to increase the number of their inhabitants. But the proprietors of houses in cities where there are not curiales, shall be bound to repair them if neglected and dilapidated: this will be done under the control of the judicial authority specially superintending a compliance with this law. Given, 13 kal. Nov. Gratian. (4.) and Merobaud. Conss. 377.

9. *On the Space to be left between New and Old Buildings.* Arcadius, Honorius and Theodosius, Imppp. AAA. to Aurelianus, Prefect of the City.—If the proprietor of a piece of ground near any public building is desirous of building upon it, he must begin by placing an interval of fifteen feet between the public and the private buildings: and he must be made to understand, that by this interval it is intended that the public buildings should be protected from harm, and that the private builder may avoid the loss of having to pull down, for having built on forbidden ground. Given, 10 kal. Nov. Arcadius, A. (6.) and Probus, Conss. 406.

10. *On the Construction of enclosing Walls.* Honorius and Theodosius, Impp. AA. to Monaxius, Prefect of the Province.—Permission is hereby given to all who wish it, throughout the provinces of Mesopotamia, Osdrona, the Euphrates, the Second Syria, Phœnicia, Libanus, the Second Cilicia, both the Armenias, both the Cappadocias, the Pontus of Polemon, and the Hellespont, and to all other provinces, where it may be desired, to surround with a wall their own possessions, or constituted places of dominion. Given at Constantinople, 3 non. Maji. Theodosius, A. (9.) and Constantine (3.) Conss. 420.

\* antiquato D. Hadriani edicto.

† (of the provinces.)

‡ auferri, not afferre.



11. *On Mœniana.* The same AA. to Severinus, Prefect of the Province.—Mœniana, which the Greeks commonly call *τειχοειδῆς*, whether those already built, or those which may hereafter be built in the provinces, unless there shall be ten feet of clear space between them, shall be absolutely demolished; but in those places where private buildings are placed facing the public granaries, owing to the obstruction of these mœniana, intervals of fifteen feet must be preserved. We announce also to those who are about to build, that they must all observe these intervals for the future, so that if any one shall attempt to build within the prescribed limits—i. e., ten feet for ordinary structures, and fifteen feet in the case of there being mœniana,—he must be apprised that not only will all that he has so constructed be pulled down, but the house itself will be forfeited to the Fisc. Given, 3 kal. Oct. Asclepiodotus and Marinianus, Cons. 423.

## LAWS OF THE EMPEROR ZENO.

12. *Preface.*—Zeno, Imp. A. to Adimantius, Prefect of the City.—Ever since we began to be in the enjoyment of a state of peace, and doing our utmost to preserve our subjects\* from external wars, we have applied our mind to the enactment of various useful laws. Amongst these, we have determined to include the present law, in which we propose clearly to exhibit what your excellency† has suggested; and, adopting every precaution to prevent any possible ambiguity of expression, we have also avoided as much as we could technical words, preferring the use of the more vulgar terms, in order that all whom it may concern may understand it without the assistance of an interpreter. For we have been informed by your excellency‡ that the divine law, enacted by Leo, our predecessor,§ of immortal memory, concerning those who might be ambitious of building in this our glorious city, is in some parts of it doubtful, in consequence of the mistaken opinions of its interpreters.

— Sect. I. *On the Space requisite to be left by him who builds.*—We therefore ordain, that neither those who wish to repair their houses, (nor those who intend to build anew,) shall depart from the previous forms, nor shall they take any light or prospect from their neighbours, unless in accordance with the original structure; but we are pleased to add also, what extent of right may be acquired by the builder of each new house, in cases where he may have obtained the power, either by contract or other stipulation, to change, if he pleases, the old form. We accordingly authorise him, if such contract or stipulation should be in his favour, to build according to such contract or stipulation, even though by so doing he may seem to injure such of his neighbours as might have objected to the contract.

— Sect. II. *On the Height to which it is permitted to raise a House.*—Moreover, since our constitution directs that an interval of twelve feet must be left by him who is about to build, between his own and his neighbour's house, and that he may add to it *more or less*,—(as this gives great security to those who build), and as no doubtful or ambiguous words ought to be admitted,—we ordain, in the most clear and explicit terms, that an interval of twelve feet must be left between each house, beginning from the part immediately above the foundations, the same admeasurement being preserved to the very summit of the building. He who shall accordingly in future observe this ordinance, will be allowed to raise his house

\* *populos nostros.*† *tua magnificentia.*‡ *magnitudo tua.*§ *pater.*



as high as he pleases, and may construct windows, as well those which we call prospective,\* as those which are only luminiferous,† according to the said divine constitution, whether he is desirous of erecting a new house, or of reinstating an old one, or of re-constructing one which has been destroyed by fire. He shall, however, be in nowise permitted to encroach upon the prescribed interval, so as to deprive his neighbour of a direct and uninterrupted prospect towards the sea, from any or every side of his house—a prospect which he may enjoy at home either standing or sitting; nor can he be allowed in any such manner to affect this prospect, so that his neighbour should have only an oblique view of the sea. In respect to gardens and trees, the former constitutions contain no regulations regarding them, nor will any be given on this occasion—they are not required.

— Sect. III. *On Windows.*—No one who is building a house near a cross-road, alley, or street, of twelve feet in width, shall be allowed to take from, and add to his own building, any portion of such street or cross-road. But in prescribing the interval of twelve feet between the houses, we do not intend to diminish that which of right belongs to the public, or to divide it amongst private proprietors, but we are desirous of preventing that such intervals between the houses be made more narrow. But if the space exceeds twelve feet, the same must remain as it is, for our intention is not that the width of the streets should be diminished, but that the rights of the city should be preserved. But if the previous form of the old building was such that the interval between two houses was less than twelve feet, the owner must not be allowed to raise his house beyond what it has been heretofore, nor must he construct any windows, unless he gives an interval of at least ten feet.

But in such case, he who is about to build cannot make any prospect windows, except such as were there before; but he may make luminiferous windows, provided he preserves an interval of six feet upwards from the floor. He must, however, in no case, venture to make what is called a *pseudopatum*, (that is, a false or fictitious flooring or pavement in the building itself,‡) and then from the real floor measure his six feet to the luminiferous windows. This would be a false and sophistical construction of the law, and a mere pretence of obeying it. For if this were to be permitted, it would happen, by the introduction of such *pseudopatum*, that the luminiferous windows would be used as if they were prospective, and there would be no difference between them. This would be a decided nuisance to his neighbour, and we therefore prohibit it to be done, and forbid the builders so to act, even should they attempt to procure the right by virtue of any agreement or stipulation.

— Sect. IV. *On the Right of Prospect.*—Moreover, since it has been judged expedient to give permission by a former law to raise the height of houses rebuilt after a fire to the extent of one hundred feet, even if the neighbour should thereby be shut out from his prospect of the sea,—in order to prevent any doubt upon the subject, we ordain that this power shall hold good in favour of those which are renewed after a conflagration, as of those which did not exist before, and are now built for the first time. But in respect to those which have suffered no injury from fire, but have become decayed from the effect of time, or any other cause, and all other kind of houses, if an open interval of one hundred feet is left between them and their neighbours, they may be erected free of all impediment, even although

\* *prospectiva.* † *lucifera.* ‡ (under the window.)

they may deprive others of the sea view. But such sea view may be taken from kitchens, privies, closets, staircases, passages leading to bye-alleys, or from courts for carriages, although the new buildings may not have such intervals of a hundred feet, provided only that the interval be not less than twelve feet. These regulations must be observed in all cases, where there is no special agreement in favour of the party building. But neighbours who build in virtue of such special agreements, may build according to the manner determined between themselves. They are in such case allowed to construct houses in the space not reserved, although they may deprive of the sea view those who have given their consent and made the agreement, or their successors; for it is not right to take away by a general law competent rights, which have accrued legally to others.

— Sect. V. *On Solaria, Mœniana, and Staircases.*—This, also, we decree to be observed as law. That no *solaria* shall hereafter be built entirely of wood or planks; but they must all be constructed after the manner and form of those which are called *Romanensia*, and a space of ten feet must be left between any two opposite *solaria*. If the narrowness of the street does not admit of this interval, the *solaria* must then be built *ἐκ παραλλαγῆς*, i. e., not facing each other, or *ἐκ παραλλήλου*, but alternating one with the other, transversely and obliquely. But if such interval does not exceed ten feet, no *solaria* or *mœniana* at all can be allowed to be built, whether facing each other directly, or only obliquely. When, however, they shall be erected in conformity with the preceding regulations, we ordain that they be elevated at least fifteen feet from the ground, and the pillars which support them, whether of wood or stone, must be so fixed in the ground as not to stand *κατὰ κύστρον*, or perpendicularly; so that neither the wall, nor the void space which is beneath those *solaria* built above, as we have described, be encroached upon, nor the alley or public road be made more narrow. We forbid also that steps shall commence from the level of the footway and lead up to the *solaria*: so that by the greater care and precaution thus employed, a greater distance between the *solaria* may be obtained, peril to the city and to the inhabitants of houses may be diminished, and fires may become less frequent, of less duration, and more easily extinguished. If, however, *solaria* or steps should be erected in any manner contrary to this our law, not only shall they be forthwith demolished, but the owner of the house shall pay a fine or penalty of ten pounds of gold; and the architect who designed, or he who received commission for the work,\* shall pay other ten pounds of gold; and if the workman who executed it shall not be able, through poverty, to pay the fine, his punishment shall be no less than banishment from the city.

— Sect. VI. *On the Colonnades of Public Porticoes and Areas.* Moreover, we ordain that no one shall be allowed to obstruct with buildings the numerous rows of columns which are erected in the public porticoes and areas † leading from that which is called *Milium* to the Capitol: or by setting up close boarding, or any other construction, among the columns. But any such buildings ‡ must not exceed six feet in width, inclusive of the wall towards the open street, and they must not be more than seven feet in height. But in every case we will that a free way from the porticoes to the streets, through four rows of columns, be set

\* *qui designavit architertus, aut qui opus recepit.* † *artifex*: probably the builder. ‡ *Stationes*.  
§ (as are at present existing.)

apart.\* shops or booths of this description must be ornamented, on the outside at least, with marble, that they may be an ornament to the city, and give pleasure to the passers-by. But in all other quarters of the city we allow the erection of shops amongst the columns, as far as, and in whatever manner, you think they may be useful to the city—the strictest impartiality being observed, so that whatever is permitted to one person be not prohibited to another.

— Sect. VII. *On Lawsuits raised against Persons building.* We ordain, also, as follows, with a view to prevent our just and honest citizens from being injured by the tricks and machinations of litigious persons.† It frequently happens that when such persons are about to build, vexatious lawsuits are got up against them, not for any injury done, but from sheer envy, and with a view to create delays: for example,—that they may oblige one who has begun to build to suspend his operations, and leave his work half finished, they drag him into a court of justice, and make him spend in law the money he had laid aside for building, and (what is the most prejudicial of all), when he shall have got a sentence in his favour, they still hold him bound by the most indissoluble chains, whilst, under pretence of an appeal, he is kept expecting the appointed term,‡ and all the while the adversary is enjoying his disappointment, and the interruption of the building.

We enjoin, therefore, in cases of this kind, that if the appeal is made from the decision of an arbiter, as soon as ever the notice has been laid before the judge, or the form of the appeal reduced to writing, it shall be lawful for either the appellant or the appellee, without being strictly bound to observe the legal period of appeal, to address themselves to your excellency,§ either alone or with the adverse party; and if this adverse party does not make his appearance after being duly summoned, the controversy shall come to a close, so that, without any further delay, the suit shall be legally put an end to, in order that the party who has been unjustly prohibited from proceeding with his building may not suffer irreparable mischief, if forced, during present or approaching winter, to wait a long period for the stated days of appeal.

Moreover, that which is most important,—if any one, in cases of this kind, should complain of your excellency's sentence, and be desirous of appealing, we ordain that a consultation shall be immediately held, and either of the parties, appellant or defendant, shall be entitled to have the sentence more accurately discussed within the precincts of our own sacred palace, and without delay. Whoever shall be so presumptuous as to put impediments in the way of persons building, should be informed, that if they lose their cause, they will have to make good all loss which shall have been sustained, and will moreover have to replace the price of materials, which will probably have been spoiled or deteriorated in the delay caused by the law-suit.

But in respect to those who shall have attempted to build contrary to law, if these are defeated in the suit, they will have to refund the losses or injuries of the person who denounced it, and who was therefore obliged to attend the pleadings.

All controversies of this kind we direct to be decided by your excellency ||

\* *per quatuor columnarum ordines*: probably signifying three intercolumniations.

† *calumniantium*.

‡ *fatales dies*.

§ *tua magnificentia*.

|| *magnitudo tua*.

alone, nor do we allow them to be heard before any of the other illustrious magistrates, nor do we permit those who litigate on these questions to plead public service, either military or civil, for refusing judgment, nor to be excused the payment of expenses and losses, which shall be decreed in the sentence of the most illustrious\* Prefect of the city, or by the decree of the officer appointed by him; but we will that those who have lost their suit by your excellency's† sentence, shall be answerable in all things, no one alleging, for purposes of exemption, the prescription of the Forum.

— Sect. VIII. *On the finishing of a Work left incomplete.* Your excellency will also take care that no contractor, or smith, or workman, shall leave a work begun by him till it is finished; but, as he has received the price of the work, he shall be obliged to complete it; or he must make good every loss which the person desirous of building may expect to suffer from it, as well as every farther loss ensuing from its not having been finished. But if he who shall have incurred this penalty shall be unable from poverty to advance it, he must be beaten with rods, and expelled from the town. No one shall be prohibited from completing work begun by another, an opinion which we know to have been entertained by some workmen, or contractors, who would neither finish what they had themselves commenced, nor allow others to complete it, and thus bring very heavy losses on those who wish to build their own houses. He, therefore, who refuses on this account to finish a work which was begun by another, shall pay the same penalty as is incurred by him who abandons the work begun by himself.

13. *On the above Law of the Emperor Zeno.* Justinian, Imp. A. to Joannes, Prefect of the Province.—Doubts having been entertained whether the constitution of Zeno, of blessed memory, which was addressed to Amantius,‡ prefect of the city, and which treats of services,§ was only local, and exclusively applied to this most flourishing city; and that these (ordinances) were only to be observed here, but that the old ordinances, which are of a different purport, still hold good in the provinces,—we, being of opinion that it is unworthy of this period, that one law should be observed in this our royal city, and another amongst our provincial cities, do hereby decree that the same constitution shall be held valid throughout all the cities of the Roman empire, and that everything relating to it shall be regulated thereby; and if, by any enactment in that law, innovations shall have been made upon the old arrangement, the same shall be observed by the prefects in their respective provinces; all former ordinances, not altered by the Zenonic constitution, remaining as before under the old laws. Given at Constantinople, kal. Sept.,|| after the consulate of Lampadius and Orestes. V.V. C.C. 531.

#### TIT. XI.—ON THE INJUNCTION OF A NEW WORK.

1. *If the Denunciator of any new Building is prepared to show cause, let him be heard, and the cause be enquired into, and Judgment pronounced within Three Months.* Justinian, Imp. A. to Joannes, Prefect of the Province.—It has come to our knowledge¶ that some doubts have been hitherto entertained respecting the injunction of

\* gloriosissimi.

† magnificentia tua.

‡ Adimantius.

§ servitutibus (with respect to property).

|| (the first year)

¶ nostra tranquillitas.



a new work; and it has been said, that if any one has issued an injunction to prohibit a work, he cannot, after the lapse of a year, again prohibit the proceeding with the building. There seems to us to be a double injustice in this conclusion; for if he has unjustly prohibited the work, such prohibition ought not to last for a whole year: if it has been done rightly, he should be at liberty to prohibit it also after the expiration of the year. To prevent, therefore, this unjust version of the law, we decree that if any one shall have issued the injunction in this royal city, the prefect of the city shall hasten a decision; and in any of the provinces, the governor\* shall determine it within the space of three months; but if any kind of impediment shall arise, so as to delay the decision of the difficulty, permission shall be given to him who is anxious to proceed in the building, to do what is required, after he shall have given proper securities to the office of the prefect of the city or of the province,—*That in case it shall be decided that he has built contrary to law, he will at his own expense pull down all which he had erected subsequent to the injunction.* In this manner, works will not be prohibited by futile denunciations, and the rights of those who apply for the injunction will be duly consulted. Given at Constantinople, 12 kal. Nov. the second year after the consulate of Lampadius and Orestes, VV. CC. 532.

#### TIT. XII.—ON PUBLIC WORKS.

1. *On Immunity.* Constantius and Constans, Impp. AA. to Catulinus.—Many persons have obtained immunities from public works by awards of the judges. We, therefore, order that all immunities hereafter so obtained shall be of no value. Given at Sirmium, 6 kal. Aug. Ursus (Lupulus,) and Polemius, Conss. 338.

2. *On the Statement of Expenses incurred.* The same AA. to Marcellinus, Count of the East.—Whatever expense shall have been incurred for public works, you will take care that an account be kept. Given at Constantinople, 5 non. Oct. Limenius and Catulinus, Conss. 349.

3. *On the Cross and Holy Relics.* The Epitome of a Greek Constitution.—No monk, nor any one else, shall erect a cross, or any holy relics, in a public place, or where public shows are exhibited.

4. *On the Prætoria and Public Buildings.* The same AA. to Eodicius, Prefect of Egypt.—Care must be taken to preserve (at all times) for the rights and use of the public, the *prætoria* of the judges and all public buildings. P.P. at Antioch, 4 non. Dec. Mamertinus and Nevitta, Conss. 362.

5. *On the Judges.* Valentinian and Valens, Impp. AA. to Symmachus, Prefect of the City.—Let no one of the judges project any new work within the city of Rome (the new city as well as the old) † without our special approbation, (unless he is willing to defray the expenses of it from his own resources.) But we give permission to all of them to sanction the re-construction of those which are affirmed to be in a state of dilapidation and ruin. Given at Philippi, 8 kal. Jun. Divus Jovian. and Varronian. Conss. 364.

6. *On Prescriptions of Time and Rescripts.* Gratian, Valentinian, and Theodosius, Imppp. AAA. to Proculus.—Prescription of time ought not to obstruct a public right, nor should even imperial rescripts be allowed to operate in such manner: and therefore all buildings ought to be demolished which, throughout the various

\* Rector.

+ Constantinople, as in Rome?



cities of the empire, either in the Forum or in any public place whatsoever, are acknowledged to have been erected (without regard to beauty or utility, or the decent appearance of the city.)\* Given at Constantinople, 3 id. Jun. Merobaudes and Saturninus, Conss. 383.

7. *From what Works the Prescription of Dignities does not exempt.* The same AAA. to Cynegius, Prefect of the Province.—All people are bound in duty to give their earnest aid in the construction and repairs of harbours, aqueducts, (and walls,) nor should any one claim the privilege of being excused from bearing his part in a labour of this nature. Given at Constantinople, 15 kal. Feb. Richomeres and Clearchus, Conss. 384.

8. *On the Failure of Buildings.* The same AAA. to Cynegius, Prefect of the Province.—All persons who have been entrusted with the care of public buildings, or to whom money has been in the usual manner entrusted for erecting them, must, with their heirs, be held responsible for the same for fifteen years from the completion of the work: so that if any fault or failure shall have occurred in the building within that prescribed term, it must be repaired from their estates or patrimony (excepting, of course, what may be the effect of accident.) Given at Constantinople, 3 non. Febr. Arcadius, A. (1.) and Bauton, Conss. 385.

9. *Whether Houses may be destroyed for the sake of erecting Public Buildings.* Theodosius, Arcadius, and Honorius, Imppp. AAA. to Aurelian, Prefect of the City.—Whenever we shall have granted permission to erect a public structure, your excellency† will take care that provision be made, that no house is to be pulled down for the purpose of beginning any public building, unless compensation be given to the value of fifty pounds of silver. But with respect to buildings of a higher value, let the matter be brought before us, and referred to our decision, that when a larger sum may be required, the imperial authority may act. Given at Constantinople, 3 kal. Mar. Theodosius. A. (3.) and Abundantius, Conss. 393.

10. *On the Inscription of Names.* The same AAA. to Rufinus, Prefect of the Province.—If any judges shall have inscribed their names on any work completed (with public money) without mention of our name, let them be guilty of treason. Given at Constantinople, 3 non. Jul. Arcadius (3.) and Honorius (2.) AA. Conss. 394.

11. *On the Repair of the Public Walls and Baths.* Arcadius and Honorius, Impp. AA. to Eusebius, Count of the Sacred Largesses.—In order to prevent the destruction of the very splendid cities and towns of the empire, we assign one third part of the revenues of estates belonging to the Republic for the repair of their walls and baths. Given at Milan, 11 kal. Jul. Olybrius and Probinus, Conss. 395.

12. *On the Walls of the City.* The same AA. to Cæsarius, Prefect of the Province.—Let all governors‡ of provinces be admonished by letters, that they do assure themselves that the several orders and inhabitants of every city ought to build their Walls anew, or to strengthen those already built; and the charges are to be regulated on the following conditions, namely, that the apportionments be assigned according to the means of each individual; that the lands of the citizens be taxed according to the estimated expense of the work to be undertaken, so that neither

\* *contra ornatum, et commodum, ac decoram faciem civitatis exstructa nascuntur.*

† *sublimis magnificentia tua.*

‡ *Rectores.*

more nor less than what is required shall be raised, and that no time be lost in putting it in hand. Its fair and just proportion must be laid upon every (productive) acre, that all may equally provide for the expense required. (No excuse will be allowed, nor any claim for immunity will be listened to.) Given 9 kal. Apr. Arcadius, (4.) and Honorius, (3.) AA. Conss. 396.

13. *On the Judges and Corporations of the City.* The same AA. to Theodorus, Prefect of the Province.—Let no one of our judges so far presume upon his office as to order the commencement of any new work without consulting our authority;\* nor let him dare, without your excellency's sanction, to take down from the public works any ornaments or marbles, or anything of that nature which shall have been esteemed to be either useful or ornamental to the state, or to remove them to any other place. If any one shall act contrary to this order, he shall be fined six pounds of gold; and the like penalty shall be incurred by the several orders of the citizens, unless they protect the embellishments of their native place,† under the authority of this decree. But the judges of the provinces may, by their own authority, undertake such buildings as shall serve for granaries or hosteleries,‡ if moved by such laudable devotion to the public good. Given at Milan, (8) kal. Jan. Honorius (4.) and Eutychianus, Conss. 398.

14. *What Buildings may be destroyed.* The same AA. to Severus, Prefect of the City.—If any structures, such as are commonly called *parapetasia*, or any other description of building, be so attached to the walls, or to any public buildings, as to endanger the neighbourhood, in respect to fire or thieving, or so as to reduce the extent of the streets or the width of the porticoes, our order is that they shall be destroyed and razed. Given at Constantinople, 6. id. Oct. Honorius A. (4.) and Eutychianus, Conss. 398.

15. *If the Prince may grant a Deed of Gift of any Public Building.* The same AA. to Eutychianus, Prefect of the Province.—In the event of any persons requesting from our bounty the gift of any public work or building, they shall not be granted to him unless they are in a state of absolute ruin, and of little or no use to the city. All rescripts of this kind are to be forwarded to the judgment of your illustrious office. Given, id. Dec. Honorius A. (4.) and Eutychianus, Conss. 398.

16. *On the Statues of the Prince.* The same AA. to Æmilian, Prefect of the Province.—If at any time the public service should require that porticoes or other structures, failing from old age, or shattered by fortuitous causes, should undergo a thorough repair, it shall be lawful, even without application to us,§ to remove from such building either our own statues, or those of our predecessors, provided it be done with proper care and respect,|| and when the building is repaired they shall be again restored to their proper places. Given at Constantinople, 5 kal. Jul. Arcadius A. (6.) and Probus, Conss. 406.

17. *No Portion of the Ground of a Public Palace may be occupied by Private Buildings.* Honorius and Theodosius AA. to Monaxius, Prefect of the Province.—Wherever any portion of ground within the Palatium of the city has been inconveniently occupied by private buildings, all such buildings shall be forthwith pulled

\* pietate nostra.

+ genialis patria.

† stabulum.

§ nostra clementia.

|| cum reverentia.

down, and the ground be restored to the palace, which ought in nowise to be straitened by the structures of private individuals. For it is an imperial privilege to be acknowledged by, and due from all persons, that those habitations should be reserved for us, which have been selected by our lawful authority, and according to the statutes of the Republic. Every such act of usurpation for the future must be prohibited. Given at Constantinople, 9 kal. Mar. Honorius, (8.) and Theodosius, (3.) AA. Cons. 409.

18. *On the Towers on the Walls, for the Defence of the City.* The same AA. to Anthemius.—The work being now complete, we direct that the towers of the new wall, which has been built for the better defence of the most splendid city, under the superintendence of your excellency, and by our authority, shall be assigned to the use and accommodation of those through whose lands it has been carried. The same also is to be a perpetual decree, with the condition, that those who thus become entitled to the use of these towers shall be bound to keep them in due repair at their own expense. Being in the enjoyment of a public property, they must be aware that the repairs and care of it must belong to them. In this manner, the beauty of the work and the defence of the city will be combined with the benefit and convenience of individuals. Given, prid. non. Apr. Lucius, V. C. Cons. 413.

19. *On the Rents of Houses and Shops in the Portico of Zeuxippus.* The same AA. to Severinus, Prefect of the Province.—As many private houses with their shops are said to exist in the portico of Zeuxippus, we ordain that the rents of the same, according to their number, shall, without any reserve, be appropriated to the maintenance of the lights, to the repairs of the buildings and roofs, and to the Baths of this royal city. Given, 5. id. Jan. Victor, V. C. Cons. 424.

20. *On Alleys and Porticoes.* Theodosius and Valentinian. Imp. AA. to Cyrus, Prefect of the City.—Those persons who, without the authority of the divine rescript, to be addressed to your excellency's\* judgment, have blocked up with their own private houses any lanes, either entirely or in part, or who have trespassed upon the porticoes, shall (by this our enactment) render to the most holy city its former rights; and a penalty of fifty pounds (of gold) shall be imposed upon any who shall hereafter be bold enough to attempt a similar encroachment. Given, kal. Nov. Theodosius, A. (17.) and Festus, Cons. 439.

21. *On the Basilica.* The same AA. to Cyrus, Prefect of the City.—We ordain that the gilded Basilica, which is also decorated with marble slabs, shall for ever remain free and unincumbered, and that it shall not be concealed and obscured† by the addition of any statues or painted portraits in honour of any one, nor shall any stalls or workshops, consisting of frame-work, be erected in any part of the said basilica. We also decree, that no horses shall be admitted into it, nor any nuptials be celebrated within its walls. Given at Constantinople, 11 kal. Feb. Valentinian. A. (5.) and Anatolius, Cons. 440.

22. *If New Works may be commenced before former ones are completed.* Leo, Imp. A. to Erythrius.—It shall not be lawful for any one of the judges in this noble city, or in the provinces, to commence any new works before he shall have done his utmost, and with due diligence and earnestness, to complete those which were begun by

\* *tua celsitudinis.*

† *obumbratione fuscari.*

his immediate or more remote predecessors, and which may have perished from age, or have been abandoned through carelessness. More merit and praiseworthiness will result from thus restoring to a state of neatness and perfection what are decaying from age, and require repair, and which, being commenced by others, have been left by them half finished. Given at Constantinople, 11 kal. Mar. Martian. and Zeno, Conss. 469.

TIT. XIII.—ON THE EXPENDITURE OF PUBLIC WORKS, AND ON THE ELDERS (PATRES) OF THE CITY.

1. *The Rectors of the Provinces and other Dignitaries are forbidden to destroy any of the Public Works, and to receive even a single grain of the Moneys appropriated to such Works, as they have formerly done. The Defenders of the City are required to look to the fulfilment of this.* Zeno, Imp. A. to Arcadius, Prefect of the Province.—We command all and each of the governors of the provinces, and the respectable judges of each diocese,—that is to say, the augustal prefect, the count of the east, and both the proconsuls and the vicars, together with their *apparitors*, according to the tenour of the general arrangements within the limits of your illustrious government,\* that they shall abstain from destroying any of the public buildings or aqueducts, which have been, or which may hereafter be, erected from the income of the cities, or from any source whatever of voluntary liberality; and that they shall not, at any time, or in any manner, impair the civic revenues, or public works executed, or to be executed, by appropriating to themselves a single grain from any of the moneys so laid out, or by receiving any gain; the same sums being made over to the fathers of the cities, and to their care. If, however, any persons shall engage to execute any public work at their own expense,—although they promised to do so of their own free will, it is nevertheless certain that they are bound by legal obligation to act up to their promise, and to fulfil their engagement by the completion of such work,—yet we grant to them, that neither they, nor their heirs, shall ever be exposed to any inconvenience or molestation for alleged non-fulfilment of their promise, in any manner, or at any time, either by way of forfeit, or by compulsion to complete. If, however, any governor of a province, or his officers, by wasting the public revenues, or by neglecting, in despite of our orders, the public works, shall take to his own use a single grain from the revenues, or shall in any manner transgress the commands of this most sacred law, the five chiefs of the office shall be condemned to perpetual exile, and shall forfeit all their property to the city which they shall have injured; moreover, the governor† of the province shall be mulcted in the penalty of fifty pounds of gold. To the same punishment shall also be subject the illustrious judges, (however high their situation,)‡ and all their official servants, (as aforesaid.) Given—§

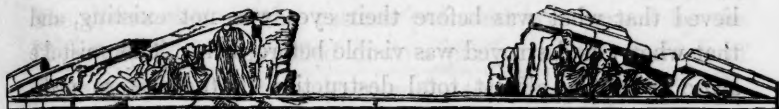
\* *magnifice tue sedis.*

+ *Rector.*

‡ *Spectabilibus Judicibus (licet illustri dignitate fuerint decorati.)*

§ (No date.)

## XXVI.

ON THE LOST GROUP  
OF THE EASTERN PEDIMENT OF THE PARTHENON.<sup>1</sup>

REDUCED FAC-SIMILE OF CARREY'S DRAWING, EXECUTED IN 1874.

"Cependant, je ne puis pas le dissimuler, j'aime à me représenter ces magnifiques ouvrages dans leur primitif état. Malgré moi, mon imagination les remplace dans leur ensemble, avec tous les détails, et tous leurs accompagnemens, et il me semble que toute tentative qui produiroit une partie de cet effet, serviroit utilement les intérêts de l'art."

QUATREMERE DE QUINCY.

"The universally acknowledged pre-eminence of the sculptures of Phidias, is a reason why we should endeavour to derive as many deductions and conclusions as possible with regard to their pristine character; and the greater the genius which produced them, the more important does it become, accurately to comprehend the thoughts and intentions, as expressed both in the whole and in all its particulars."

WELCKER.

I HAVE been encouraged by the above quotation from the admirable *Lettres à Canova*, by that enthusiastic and eloquent artist, M. Quatremère de Quincy, to venture upon a subject, from which I might otherwise have been deterred by the very different opinions of other writers.<sup>(2)</sup>

<sup>1</sup> The accompanying engravings have been copied from the copper-plates of the Eastern and Western pediments, as restored by Professor Cockerell, and published by the Trustees of the British Museum, who have very kindly lent them for that purpose; and I take this opportunity of thanking them, to express my obligations to Mr. Hamilton, Mr. Newton, and other friends, for several valuable suggestions. The western pediment exhibits only one or two trifling alterations, but the eastern has been entirely re-arranged. In submitting this design to the public, it is necessary to apologise for any defects, whether of drawing or composition, which it may exhibit; and to beg the reader to consider that it is formed, not from any description of the sculptures, not with any idea that it represents the actual works of Phidias, but simply as an illustration of the text, and as founded solely upon incidental notices in the poets, upon vase paintings, and other monuments.

<sup>2</sup> "Après avoir vu la difficulté qu'il y-a de rendre compte des figures même



No small degree of credit is due to the accurate Stuart for having been the first who perceived that the eastern end of the Parthenon formed the front of the building. Dr. Spon, Sir George Wheler, M. de Nointel and others, in looking at the sculpture of the western pediment, which was then, with the exception of the statue of Minerva, tolerably perfect, all believed that what was before their eyes was not existing, and that what was destroyed was visible before them. This mistake arose from the almost total destruction of the eastern pediment, and the meagre description of the temple given us by Pausanias. The figure of Minerva in the western pediment having fallen, led these persons to suppose that the statue of Neptune represented Jupiter, and thus not only each individual statue in this pediment was misinterpreted, and those remaining of the eastern pediment equally misunderstood, but the very plan and arrangement of the building was not comprehended. Notwithstanding the opinion and authority of Stuart, and more recently of Visconti, the French interpreters of the *Antiquities of Athens* reverted again to the former error, which opinion was also accepted by one of the most distinguished antiquaries of the present day; and it was not till 1825, when M. Quatremère de Quincy published his *Restitution des deux Frontons du Temple de Minerve à Athènes*, that Stuart's opinion was ultimately established and confirmed.

The leading cause of all this error was the ruined state of the eastern pediment. Long before the damage occasioned by the Venetian bombardment, we find in the drawings by Nointel,

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qui restent, on voit combien il doit être plus difficile encore de rendre compte de celles qui ont cessé d'exister. Il faut même avouer que de semblables projets de restitutions, quoique utiles aux artistes comme études, doivent être exclus d'ouvrages de la nature de celui dont il est ici question."—MILLINGEN, *Annal. dell' Inst. di Corr.* iv. 207.—"The attempt to *infer* the treatment and details of the alto-relievo group which once occupied the eastern pediment, from the fragments of it which remain, would be as futile an enterprise, as that to reconstruct an Athenian tragedy from a few broken lines."—CHR. WORDSWORTH. *Athens and Attica*, 8vo. Lond. 1836, p. 116.

taken in 1674, the centre of the pediment is one large void: and in 1676, Spon and Wheler write—"The postick or hind-front" (as called by them) "was adorned with figures, expressing" (as supposed by them) "Minerva's contest with Neptune about naming the city of Athens; but now all of them are fallen down, only part of a sea-horse" (a horse's head) "excepted."<sup>(1)</sup> The destruction of the eastern pediment was caused by the Christians, who had pulled down a portion of the pronaos of the temple, in order to make room for the absis of their church.

M. de Quincy did not content himself with proving the eastern extremity to be the front of the temple; but he projected an imaginary restoration of the composition of its pediment, based upon an observation of Visconti's.<sup>(2)</sup> It is due to this distinguished architect and antiquary (M. De Quincy), that we give the chain of reasoning which he adduces in support of his argument:—

"The mythological origin or birth of the divinities formed, if we may so say, the foundation of pagan religion; and the theogony, the source of all fable, was in some measure the element of their creed. Nothing was more common in works of art than these theogonic representations. On the base of the statue of Minerva, by Phidias, in the interior of the Parthenon, that sculptor represented the birth of twenty divinities, '*viginti dii nascentes*,' among others that of Pandora.<sup>(3)</sup> Would it not have been most natural for Phidias, charged with the sculptures of the Parthenon, to choose for the subject of the principal front of his temple, the birth of her to whom it was dedicated? How can we suppose that Phidias, who must have been acquainted with the marvellous story of her birth, the details of which are still remembered by all the world, would not have seized this idea for the principal subject, and represented it under those circumstances which would render it apparent to the spectators? We must, then, allow that the worshippers of Minerva, with whom the miracle of her birth was an article of faith, would never have been induced, so complacently as Spon and Wheler, to accept the presentation of the daughter, mentioned by no ancient writer, for the accouchement of Jupiter, sung by all the poets.

<sup>1</sup> WHELER'S *Journey into Greece*, p. 360-364.

<sup>2</sup> "Toutes les figures qui appartoient au centre de la composition, dont les principales représentoient Minerve tout armée, sortant de la tête de Jupiter, avoient disparus depuis un tems immémorial."—VISCONTI, *Mémoire sur les Ouvrages de Sculpture qui appartoient au Parthenon*, 8vo. Lond. 1816, p. 38.

<sup>3</sup> PLIN. *H. N.* xxxvi. 5.

"In the Museum at Bologna is an ancient Etruscan patera" (mirror)<sup>(1)</sup> "representing the birth of Minerva, the treatment of which is so conformable to the ancient myths, that I cannot imagine any composition which would be more suited for the centre of the pediment. It represents the birth of Minerva, who issues from the head of Jupiter. The goddess has the helmet on her head, the buckler on her arm, and a spear in her hand. Jupiter is seated, holding the sceptre in one hand, in the manner of a spear, and the thunderbolt in the other. On each side of the goddess is a woman. On his right is the deity called Diana, Juno or Lucina, whose two arms are elevated, and who seems by the action of one of her hands to have assisted at the operation of the extraordinary childbirth. On the left of Jupiter is Venus, recognisable by her half-naked attire, a sprig of myrtle, and a dove. Behind Juno Lucina is Vulcan, still armed with the axe which has cleft the head of the god, and seeming to regard with admiration the success of his operations. . . . .



<sup>1</sup> It is published by Dempster (*Etr. Reg. i. 78*); Gori (*Mus. Etr. tab. 120*); and explained by Foggini (*Diss. Corton. ii. 93*); and Lanzi (*Saggio di Lingua Etrusca, ii. 191*).

"Engraved pateras (mirrors) and terra-cotta vases may be considered as the productions of a manufacturing industry. Whatever degree of ability we might wish to attribute to the artists employed in multiplying such works, we cannot award to them the merit of invention, of composition, of whatever constitutes, in fine, the original idea of those various subjects presented to us in such works. It is probable that such manufactories had formerly, as our own in the present day, models of figures and groups copied from ancient sculptures or paintings, and that these designs formed types, which were copied with more or less fidelity, and which served to perpetuate the more ancient style of drawing of the primitive schools.

"Thus may be explained the excessive difference of style in the drapery, the drawing, and the general treatment, which one beholds in two vases, found, perhaps, in the same tomb, and which display the same form, material, varnish, and workmanship, though their style and drawing indicate a difference of many ages.

"A similar anomaly of style is met with in the Etruscan pateras. Some of them display an apparent treatment without art, or anterior to art, which is in all probability imitative. Others, on the contrary, exhibit compositions, forms, outlines, attitudes, and movements, which indicate either the epoch of a more advanced art, or that they are copies of original works by superior artists. In this last category may, we imagine, be placed the design of the copper patera representing the birth of Minerva. The general composition, the grouping, the character of the heads, the style of drapery, the costume of the figures, the pose and attitude of Vulcan,—all are distinguished from that stiff, false, and unpractised drawing of the outlines, that monotony of drapery, that absence of truth, that awkward stiffness, that affectation of constantly showing a profile,—incontestable signs of ignorance, which betray the age of the first essays of imitation among all people.

"If the style of drawing and the composition of this work had offered us those traits of a primitive style, which in Italy, as in Greece, preceded by a lapse of several ages the epoch of Phidias, we might suppose that the idea of this representation of the birth of Minerva, on an instrument of sacrifice doubtless in use in the worship of that goddess, might have been handed down by tradition, and after being multiplied under the same form as an object consecrated by religion, might have suggested to the sculptor of the pediment in question the general intention of his subject.

"But it is otherwise. The composition, the adjustment, the design of this scene traced on copper, evidently indicate an age in which the arts of Etruria, although greatly inferior in several respects to those of Greece, had yet received from them some reflection, and thrown aside their first stiffness. Thus it will be permitted to suppose, that the grand and celebrated compositions of the Parthenon at Athens were reproduced in design, and that some of the subjects became the objects of free imitation for many of those dependent arts, which in all ages exist at the expense of the superior. It is probable, therefore, that the Etruscan patera may be a reminiscence of the pediment of Phidias. At all events, and without carrying these conjectures too far, we shall find, I think, by a comparison of the design of this patera, with due regard to the composition required in a pediment, that the centre of the pediment, considering its pitch, and the elevation of its upper angle, would present the most natural situation for a subject such as that I have restored. Minerva, rising above the head of the god, would be placed immediately under the angle, and nothing would have been more easy than the execution of such a group.

especially when one considers that the sculptures of these pediments, instead of being executed in bas-relief, carved out of the solid blocks of the tympanum, were composed of statues, each of independent workmanship, and afterwards placed together so as to form one general composition."

This opinion of Minerva rising from the head of Jupiter was adopted by Brøndsted, (*Voyages et Recherches en Grèce*, fol. Paris, 1830), and more recently by Gerhard, (*Athenens Geburt*, 4to. Berlin, 1838), who only differs from M. De Quincy in the appropriation of some of the accessorial figures. He founds his opinion, however, not on a single Etruscan mirror, but on the numerous representations of this subject on painted vases, which he considers "should remove all doubt as to the subject represented in the pediment of the Parthenon."

In a subsequent pamphlet, (*Drei Vorlesungen über Gyps-Abgüsse*, 8vo. Berlin, 1844), M. Gerhard has given a restoration of the pediment, taking as his basis a vase of remarkable beauty and importance (formerly belonging to M. Beugnot, but now in the British Museum),<sup>1</sup> which vase has also been published and explained by MM. Lenormant and De Witte, (*Elite des Monumens Céramographiques*), and by Forchhammer, (*Die Geburt der Athene*).



THE BIRTH OF MINERVA, AS REPRESENTED ON THE BEUGNOT VASE.

As considerable use has been made of this vase in the accompanying restoration, it may be useful to describe the different figures, as explained by these writers. In the centre we behold Jupiter (Zeus) and Minerva (Athena). On their right are Vulcan (Hephæstus), Neptune (Poseidon), and Bacchus

<sup>1</sup> No. 741 \*. See *Vase-Catal. Brit. Mus.*



(Dionysus): on their left Eileithyia and Diana (Artemis). All these have their names written in characters running towards the centre. Between Poseidon and Dionysus are two figures, which have been taken for Nike (Victory) and Apollo, or Iris and Theseus. The outside figures have been described by Gerhard as a Demos and Nereus; by the British Museum Vase-Editors as a Demos and Hades; by Forchhammer as Olympus and Thessalus; and by Lenormant and De Witte, as Amphitryon or Icarius, and Cecrops.

This vase not only puts us in possession of several particulars relating to the myth, but it is also interesting, as being the most carefully-painted vase of the Minerva series, and in having the figures red on a black ground, like the Magna-Græcia vases. Although we cannot consider that it offers us a precise indication of the order and arrangement of the Parthenon pediment, there being six figures on one side, and only three on the other, it is possible that some of the figures may have been copied, by various gradations, from the Parthenon pediment; and we may at least be allowed to give a greater importance to the representation on this vase, from its vast superiority over other similar monuments. The points which I consider of such interest are—

The appearance and attitude of Diana and Nike:

The attitude of Apollo, whose clenched hands so admirably correspond to the description by Homer:(')

The attitude of Eileithyia:

And the presence of Hades and a Demos.

With respect to the unequal distribution of the figures, we may imagine that the artist has omitted two figures on the left of the centre, from want of space; and if we suppose these to be Mars (Ares) and Venus (Aphrodite), we shall have the same characters as in the accompanying design, with the exception of Dionysus in lieu of Juno (Hera).

<sup>1</sup> See page 394, note 5.

III. In opposition to the advocates of the foregoing theory, that the actual birth was represented, several writers have reverted again to the original supposition, entertained by Spon and Wheler, and by Stuart, that the presentation rather than the birth of Minerva was selected by the sculptor, as being equally indicative of the sacred myth, and as being more consistent with the principles of artistic treatment. This idea was first put forward by Professor Cockerell, in 1830, (in his *Illustrations of the Elgin Marbles in the British Museum*, vol. vi. pl. xxi. p. 13), whose opinion Millingen immediately supported, (*Annali dell' Inst. di Corr. Archeol.* iv. 1832, p. 207), though he objected, that the figure of Jupiter must have been represented standing, as, otherwise, the projection of the feet and knees would have been greater than that of the corona. More recently, Professor Welcker has published an essay on the same subject, (*On the Sculptured Groups in the Pediments of the Parthenon*: translated by Dr. L. Schmitz, *Class. Mus.* vol. ii. 8vo. Lond. 1844, p. 367,) in which he advocates a similar opinion, believing, with Millingen, that Jupiter must have been in a standing position. He considers the former theory as monstrous, and objects to its advocates, that representations depicted on vases were copies rather of paintings within the temple, than imitations of the sculpture without:—

“Architectonic sculpture, as applied to the ornamenting of temples (*κόσμος*), does not follow quite the same laws, and has, in part, its peculiar subjects. It is at any rate obvious, that the products of vase manufactories, destined for certain purposes in ordinary life, can have had but a very limited influence upon sculpture and upon great public monuments. Every one who looks at the creations of Phidias with eyes entirely free from the impressions made by vase-paintings, and with an unbiassed judgment, must confess that he could not have represented Zeus in the same manner as the vase painters. And if ever so many other artists, working as they did for the most distant localities, and with the most distant objects in view, had followed the examples of those painters, certainly the sculptor who created the groups of Aglauros, Herse, and Pandrosos, and of Thallo and Auxo, who knew how to manage within a given space the original figures of Aphrodite on the knees of Dione, and the groups of the Eleusinian divinities, and who invented the figures of the twelve gods sitting on chairs in the eastern frieze, cannot have adopted an ancient type in representing Zeus giving birth to his daughter; he cannot have disfigured, by a monstrous notion of the ancient belief in miracles,

and by a remnant of the rude simplicity of early ages, a work which, in all its details, contains evidence of the most extraordinary power of invention, and, at the same time, of the deepest and purest artistic taste, and which throughout breathes life and nature, notwithstanding its sublime grandeur; he cannot have intolerably exaggerated in his colossal marble a representation which, destined as it was for a small painting on a small vessel, and for small and limited circles, was still bold and dangerous: and he cannot have exhibited such a thing to the eyes of all Greece, in a spot which, of all others at Athens, was calculated to invite the curiosity of all admirers of art. It is, indeed, repugnant to our feelings, and impossible to conceive it."

I have thought it necessary to give the opinions of these writers thus fully, that the reader may be able to form a more complete idea of the subject in dispute, and to judge more freely of the probability of the theory which I am about to propose, and which will be found to be in part compounded of the two opinions, without being identical with either. I agree with MM. Visconti, Quatremère de Quincy, Brøndsted, and Gerhard, in the opinion that the presentation of Minerva to the gods of Olympus, cannot be understood as identical with the birth of Minerva as described by Pausanias; and I agree with MM. Cockerell, Millingen, and Welcker, in condemning the conceit of representing a doll-like figure of Minerva, issuing from the head of Jupiter, in so palpable a material as marble, as being altogether monstrous and inartistic.

"Non tamen intus

Digna geri promes in scenam: multaue tolles

Ex oculis, quæ mox narret facundia præsens."<sup>(1)</sup>

"Nec, quodcumque volet, poscat sibi fabula credi."<sup>(2)</sup>

With the exception of Professor Cockerell, who unites in himself the practised knowledge of architecture and sculpture with the power of learned criticism, and of M. Brøndsted, the other writers have treated the subject only in a mythological aspect.<sup>(3)</sup> Leaving this part of the question—so far as regards

<sup>1</sup> HOR. *De Arte Poet.* 182-184.

<sup>2</sup> *Id.* 339.

<sup>3</sup> Since the preparation of this article, I find that Mr. Lloyd, in an essay written in 1846, and unpublished (but communicated to a few friends), adopted the view of placing Minerva upright, in the centre of the pediment; Juno being seated on one side of her, and Jupiter opposite on the other: the grouping of Jupiter and Vulcan being taken from the bas-relief published by Winckelmann.

the central figures—for the consideration of those who are more competent than myself to express an opinion, I purpose to treat the subject simply in an artistic point of view. I propose to consider, not so much the instructions which the Hierarchy would give through Pericles, as the conceptions which Sculpture would create in the mind of Phidias—not so much what Phidias had to do, as how he did it.

There can be no doubt that of the two theories which have been suggested, the presentation of the new-born goddess to the deities of Olympus would afford a subject of great nobleness and beauty. Jupiter would be seated in the centre of the pediment, and with his attributes—his lofty and magnificent throne, his carved footstool, his sceptre and his eagle,—would form an imposing and splendid centre to the composition. No “monstrous” wound, no expression of pain, would detract from the god-like serenity of Jupiter’s appearance; no exaggerated character in the other deities would tend to lessen the simple majesty of the general composition. The various figures of the pediment, though disposed in different attitudes, would yet form one continued whole, having a grand central point of unity, and that centre, the sovereign deity himself. Surely, no subject could exceed in nobleness of character that in which the king of the gods is represented sitting on his throne, surrounded by all the superior deities. But though one of the most desired objects with the sculptor would be to form the noblest scene he could devise, this was not the paramount requirement. It being Minerva’s house, he had to represent Minerva’s birth; and such, according to Pausanias, was fully executed:—“To those entering the temple called Parthenon, all that is placed in the pediment refers to the birth of Minerva; but in the back of the temple is the contest of Minerva and Neptune for the right of territory.”

Ἐς δὲ τὸν ναὸν, ὃν Παρθενῶνα ὀνομάζουσιν, ἐς τοῦτον εἰσιῶσιν, ὅποσα ἐν τοῖς καλουμένοις αἰετοῖς κείται, πάντα ἐς τὴν Ἀθηνᾶς ἔχει γένεσιν. τὰ δὲ ὀπισθεν ἡ Ποσειδῶνος πρὸς Ἀθηνᾶν ἔσταν ἔρις ὑπὲρ τῆς γῆς.<sup>(1)</sup>

<sup>1</sup> PAUS. i. 24, sec. 5.

Although this event is literally represented in the vase-paintings adduced by the opposite party for their authority, and although the compositions on such vases are generally such as are most typical of the event indicated, and which most perfectly embrace, as well the events which preceded the moment chosen, as those which followed it; yet we have no authority for supposing that the artist of the Athenian pediment was obliged to select such moment, embracing most completely every event referred to. Such representations become liable to objection, when we consider that the moment chosen being that which is most perfectly in equilibrium, and referring equally to the events preceding and following—would relate equally to Jupiter as to Minerva. Were an earlier moment indicated, then, although the subject would still relate to the birth of Minerva, the scene would have especial reference to the pain induced by the operation of Vulcan; or still earlier, to the labours of childbirth; or earlier still, to the swallowing of Metis: and in these cases, Jupiter would be brought more and more in view, and Minerva less.

It is precisely thus that we find the subject treated by the vase-painters. In more than one example, we have Jupiter in labour, in which the condoling expression of the surrounding deities is most comically represented;(<sup>1</sup>) in another, Eileithyia is actively engaged in her professional duties;(<sup>2</sup>) in others, Jupiter is represented with his hands clenched, as in the vehemence of pain;(<sup>3</sup>) in another, he is in the action of hurling his thunder-bolt at Vulcan, in return for his compulsory assistance;(<sup>4</sup>) in others, with the hand outstretched, as in the moment of delivery;(<sup>5</sup>) in several, we have the goddess rising from the head of Jupiter; in two vases, we see Minerva standing on his knee;(<sup>6</sup>) and we have two other examples, in which she

<sup>1</sup> LENORMANT and DE WITTE, i. pl. 54; *Museo Etrus.* ii. 1, 2, 31?, 48.

<sup>2</sup> LEN. pag. 190; PASSERI, *Pict. in Vasc. tab.* 152; DEMPSTER, *Etrur. Reg.* i. pl. 74.

<sup>3</sup> LENORM. i. pl. 58, 60, 61.

<sup>4</sup> *Id.* pl. 56.

<sup>5</sup> *Id.* pl. 62, 64.

<sup>6</sup> *Id.* pl. 55, 59; Vases of Comte Lambert, i. 83.



appears in perfect stature, before Jupiter, who stretches out his hand towards her in exultation.<sup>(1)</sup> It is far from impossible that vases may one day turn up, which shall represent the swallowing of Metis, or the operation of Vulcan's axe: for as the decoration of vases was left to the fancy of the artist, the scene might be represented in a thousand manners, though, as I have stated, the point of time most generally chosen is that of the actual delivery.

But in the application of this myth to the pediment of the Parthenon, we have no authority for supposing that the artist was under the obligation of selecting such said moment of most perfect equilibrium. On the contrary, his object would naturally be to give as much importance as possible to the representation of Minerva, and he would endeavour to select such a point in the history as, at the same time that it effected this, should refer clearly to the previous events. Another objection to the adoption of the vase-paintings is the diminutive size given to the principal figure, the infant puppet-form of which would appear another being from the gorgeous chryso-elephantine statue within the naos of the temple. But independently of the want of importance given to the figure of Minerva, the difficulty and absurdity of executing such a figure in the solid, constitutes an insuperable objection.<sup>(2)</sup>

Before venturing on any conjectural restoration of the eastern pediment, it will be well to examine attentively the composition of that of the western front. In doing so, it will be found that order and symmetry,<sup>(3)</sup> required by Vitruvius in all architecture, are peculiarly necessary as the very fundamental laws of a pedimental composition: and that no statue,

<sup>1</sup> LENORM. pl. 66; *Mus. Etrus.* ii. 29.

<sup>2</sup> It is true that a statue of this description did actually exist at Athens, (PAUS. i. 24.), but as an individual work it might have been treated ever so capriciously.

<sup>3</sup> "Non potest ædes ulla sine symmetria atque proportione (Eurhythmia) rationem habere compositionis, nisi uti ad hominibus bene figurati similitudinem, membrorum habuerit exactam rationem."—VITRUV. *de Archit.* iii. 1.

however well executed, or however beautiful in itself, can look well in a pedimental group, unless its form, and mass, and attitude, and, indeed, its entire character, be in accordance with the figures immediately surrounding it, but more particularly with the figure corresponding to it on the other side of the pediment. There is a passage in Aristotle which directly bears upon this subject.

To form a *unity*, it is necessary that "the parts be so connected, that if any one of them be either transposed or taken away, the whole will be destroyed or changed: for whatever may be either added or omitted without making any sensible difference, cannot be a part of the whole."<sup>(1)</sup> With this key to our enquiries, we proceed to examine the sculpture of the more perfect pediment.<sup>(2)</sup>

In the Western front of the Parthenon we have the most beautiful group left us from antiquity. Nothing can exceed the admirable play of lines produced by the sculptor in this composition. Notwithstanding the variety of figures, there is not one which presents a perpendicular line. Artistically speaking, the subject is divided into two masses, the figures of which are of proportionate size. In the central group are Neptune and Minerva, with their chariots and attendants. These figures, by their arrangement as well as by their size, constitute the principal and more prominent group. The second mass, if we

<sup>1</sup> ARISTOT. *Poetica*, viii. 4. Ed. Hermann.

<sup>2</sup> In decorating the pediment of a temple, the sculptor must have felt great difficulty in applying his group to so unaccommodating a form as a triangle. When the subject admitted of the introduction of the supreme deities in the centre of the group, as in the pediments of the Parthenon, the artist availed himself of the common practice of remote antiquity, of representing the deity as of colossal size; and he was thus enabled to fill up his pediment more easily. But when the subject was of no sacred character, but represented such scenes as a battle between Greeks and Amazons, no such liberty could be permitted, and the sculptor was obliged to have recourse to other means to raise up the centre of his composition. We find these two manners well exemplified in the monument at Xanthus. In the eastern pediment, the god and goddess, seated in the centre, are of colossal size; and, in the western, the centre is occupied by a figure on horseback, which fills up the composition very successfully, while the shoulder of the half-pediment which is preserved to us is occupied by men on foot, advancing against him.

may so call it, is composed of the accessorial figures in the two extremities of the tympanum, which also correspond to each other in their individual parts.

By this division of the sculpture, the eye is enabled at a glance to grasp the leading subject represented by the artist, instead of wandering indistinctly over the whole of the composition had the figures been of a more equal gradation. As the central group comes out distinctly from the side groups, so the two principal figures, Neptune and Minerva, stand out boldly from all other figures: and thus the eye is attracted at first by the general character of the central group, and immediately after by the principal personages of that group.

Though the figures of Neptune and Minerva are so colossal, that were they standing upright their heads would touch the apex of the pediment, yet, by the attitude given to them, all appearance of heaviness is overcome, and the figures are prominent without being overpowering. The Neptune leans to the right, the Minerva to the left, while their arms and legs cross each other, so as to form, with these two figures only, a central group of great variety and beauty of lines.<sup>(1)</sup> The land and sea-horses on either side give a pyramidal form to this central group, and by the undulating lines of the horses, give a peculiar grace and compactness to the whole composition.

Mr. Lloyd very correctly observes of the Minerva, that "from the view that is shown (in Carrey's drawing) of the fracture, or stump, of her left arm, it must have extended before him, and outwards from the pediment."

This position of the arm I consider necessary to the perfect balance and expressiveness of the figures. Minerva is placed behind Neptune, and behind her horses, and we require this

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<sup>1</sup> I would refer the reader to Mr. Lloyd's judicious remarks on these two statues, in the fifth volume of the *Class. Mus.*, where he very accurately describes the tension and relaxation of the different muscles, the relative proportion of vigour and spirit, the contrasted and symmetrical gesture, and the interlacing of the several parts.

extension of one arm, to denote the superiority of the virgin goddess. I have, therefore, in accordance with this feeling, slightly altered the accompanying plate, by introducing the arm and shield<sup>(1)</sup> of Minerva warding off and protecting her country from the attack of its enemies. The spear is in Minerva's right, the trident in Neptune's left, or weak hand. By this position of the goddess, the sculptor has cleverly managed to place Neptune in the way of *his* horses, while Minerva allows free passage to her own.

Another remarkable evidence of careful study of effect evinced in this pediment, is seen in the manner in which the voids and masses of the pediment are made to alternate regularly with the columns and intercolumniations below; thus avoiding those perpendicular lines observable in the portico of one of our public buildings, where the columns appear to be not only extended by the pedestals below, but to run up into the sculpture above.

This pediment, then, is so remarkable, that we at once turn to the Eastern, naturally expecting to behold there a still more transcendent grandeur and beauty. But, instead of finding in the restorations of this pediment by the various critics who have written on the subject, <sup>(2)</sup> that blending of the lines, and welding, we might almost say, of the forms together, we perceive in the generality of such designs, insulated perpendicular figures, without life or meaning: instead of the greatly increased proportion given to the principal figures, as observable in the western pediment, we find there the figures are, as much as possible, reduced to one medium size.

Judging of these designs abstractedly or artistically, I

<sup>1</sup> A proper type of Minerva as a guardian deity.

<sup>2</sup> It would betray a want of candour to include Mr. Cockerell's design, (*Anst. Marb. Brit. Mus.* vi.) in this category, which displays great judgment and ability, though the theory is different from that at present offered. The sculptured pediment of St. George's Hall, Liverpool, designed by Prof. Cockerell, is the finest modern composition for a pedimental group that I am acquainted with. Its general character approaches somewhat to that of the western pediment.

cannot consider that they express the spirit and character of the lost original: we must seek, therefore, in what other manner these elements may be best obtained. It has been stated that in the western pediment the sculpture is divided into two distinct groups, occupying the centre and the extreme ends of the triangle. In the eastern pediment we have only the extreme ends of the pediment, which can give but little or no clue to the arrangement of the central group, which is entirely wanting. The temple being dedicated expressly to Minerva, and finding Minerva holding a conspicuous position in the western pediment, it is reasonable to suppose that Phidias, who was—" *Dius quam hominibus efficiendis melior*,"<sup>(1)</sup> would have given a still more prominent position in the eastern pediment to the figure of Minerva; by reason both of the greater importance of the subject of representation, and from the east end being always considered as the principal. Minerva should, therefore, be the central figure in the eastern pediment; and, as in the western pediment the central figures are of colossal size, so in the eastern the statue of Minerva should not only occupy the centre of the pediment, but form the most important figure in the composition. In the western pediment, we observe great beauty is effected by the lines of the horses, the forms of which appear necessary to connect the whole together, and prevent an undue preponderance of the perpendicular form. Some lines of this description are required in the eastern pediment, though it is possible that the direction of these lines should be so managed as to produce variety. Thus, the central figure of Minerva, in the eastern pediment, would form a contrast to the double figures of Neptune and Minerva in the western, and thus the converging or pyramidal lines of the horses might require diverging lines in the eastern pediment, which lines are procured in the accompanying engraving, by means of the sceptres of Jupiter and Juno; precisely in the same manner that we find

<sup>1</sup> Quint. Inst. xii. 10, sec. 9.



this occasionally managed in vase-paintings.<sup>(1)</sup> And if we compare the several other groups in the two pediments, we shall observe similar marks of contrast.

This variety we might have expected to behold in the central group of the eastern pediment, had the figures been preserved to us. As the central figures in the western pediment are in animated attitudes, those in the eastern might have been calm and sedate: as the side figures in the western are in quiet attitudes and seated, those of the eastern might have been raised and erect.

These, then, are what I consider to be the characteristics of the eastern pediment,—such a perceptible difference in the size and composition, as should render the central group easily distinguishable from the side groups—such predominating importance given to the central figure, as should render it pre-eminent over all others—such freedom and gracefulness in the curved lines on each side of the centre, as should contrast most effectually with the straight lines, and such fulness and roundness as should unite the whole in one composition. But in imagining the figure of Minerva to occupy the centre of the pediment, we must not forget that the glorious statue of the goddess, the masterpiece of Phidias' art, stood below. The attitude of this figure was erect. She stood upon a lofty pedestal, and her head nearly touched the summit of the roof. The doors are open; and she is visible to the eyes of the countless multitude before the temple. It is impossible, then, to suppose that the Minerva of the pediment could have been represented erect, for she would then have appeared to stand upon the head of the statue beneath. An attitude must, therefore, be selected for her, which shall appear least identical with

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<sup>1</sup> See plate 242 and 317 of Inghirami (*Pitture di Vasi Fittili*), where we see spears and thyrsi so arranged. The celebrated vase of the death of Priam, in the museum at Naples, is particularly remarkable for the pyramidal forms of the various groups.

that below. The being is the same, but the appearances should be most dissimilar.

In conformity with these several requirements, I have imagined the figure of Minerva to occupy the central portion of the pediment, to be represented as just issued from the head of Jupiter, and as rising supremely towards the highest heaven, and springing up into ether.<sup>(1)</sup>

Ἡ γενέτηρος

Πηγῆς ἐκπροθορούσα, καὶ ἀκροάτης ἀπὸ σείρας.<sup>(2)</sup>

She has attained her full stature; she utters a loud shout;<sup>(3)</sup> her arms are extended upward, holding a spear and buckler;<sup>(4)</sup> while her feet are raised from the ground, to indicate, by the continuity of action, the period of recent birth.

Thus is she described by Pindar,—

What time, by Vulcan's adze, the poets sung,  
From great Jove's head, the armed Minerva sprung  
With awful shout—Heaven's thunders rolled,<sup>(5)</sup>  
And gods and men all shuddered to behold.

<sup>1</sup> See page 373.

<sup>2</sup> PROCLUS, *Hymn. ad Miner.* 1, 2.

<sup>3</sup> αὐτὴ τε πόλεμοι τε. HOM. *Hym. ad Min.* xi. 3. φιλόμαχος, ÆSCHYL. *Sept. c. Theb.* 130. In an Etruscan Mirror, published by Dr. Braun in the *Annali*, 1851, (p. 141, pl. G, H,) *Lalan*, a personification of the war-shout, ἀλαλά, is represented, together with *Preale*, who may be considered as a personification of the impetuous leaping-forth of Minerva, fully-armed (πρόλις) from the head of Jupiter.

<sup>4</sup> See TZETZES, *ad Lycoph.* 355; SCHOL. *ad Apoll.* iv. 1310. Among other derivations of the names of Minerva is that of Πάλλω, to brandish, or vibrate. See also PLATO, *Cratyl.* 406. Minerva is also described as shaking her shield, (NONNUS, *Dionys.* iv. 390, xxvii. 296); and thus, paying attention also to the vibrating crest of her πῆληξ, we must consider that her impetuous leaping motion, so constantly exhibited on the vases, is an important element to be expressed in a representation of her birth.

<sup>5</sup> This appears alluded to in the many vases representing the birth of Minerva, where we find Jupiter so generally grasping his thunderbolt. See LENORMANT and DE WITTE, i. pl. 56, 57, 59, 62, 63, and 65 A. It is partly with this view that I have introduced the eagle and thunderbolt under the feet of Minerva, and partly as a figurative representation of the birth of the goddess from the head of Jupiter. The owl might have been introduced in the folds of the drapery. The Scholiast of Aristophanes (*ad Equit.* 1091) says that the owl flying was a symbol of victory. See also DIOG. *Proverb. Cent.* iii. 72.

'Ασὶ' Ἀφείστου τέχνῃσιν  
 Χαλκελάτῃ πελέκει πατέρος Ἀθαναία κορυφᾷ κατ' ἄκραν  
 Ἀγορεύσας, ἀλάλαξεν ὑπερμάκει βοᾷ. (<sup>1</sup>)

Thus by Hesiod,—

From his head proceeded, self-created,  
 Pallas Tritogenia, blue-eyed maid;  
 Awful, (<sup>2</sup>) unconquer'd, leader of the fight,  
 Whom shouts and tumults, din and wars delight. (<sup>3</sup>)

And thus by Homer,—

Forth from the head of him, Ægiocchus,  
 Immortal Jove! she rushed impetuous,  
 Brandishing aloft her sharp-pointed spear.  
 At the dread sight Olympus shook with fear;  
 The earth groaned heavily, the sea distress'd,  
 With purple waves her sovereign might confess'd. (<sup>4</sup>)

And in the same manner is she described by Philostratus,—

"The gods were affrighted at seeing Minerva just issued from the head of Jupiter, by the assisting instrument of Vulcan, appearing completely armed. (<sup>5</sup>)

<sup>1</sup> PINDAR, *Olym.* vii. 65-70.

<sup>2</sup> γοργῶπις ἀδάματος θεᾷ. SOPH. *Ajax.* 450.

<sup>3</sup> Αὐτὸς δ' ἐκ κεφαλῆς γλαυκώπιδα Τριτογένειαν,  
 Δεινὴν, ἐγρεκίδουμον, ἀγέστρατον, ἀπρυτόνην,

Πόττιαν, ἣ κελαδοὶ τε ἄδον πολεμοὶ τε μάχαι τε.—HESIOD. *Theog.* 924-926.

ἴπων καὶ σασκίων ἀδομένα πατάγῃ.—CALLIM. *Hymn. in Lavac. Pall.* 44.

Πολεμοκλόνον τ' Ἀθήνην, ANAC. liii.

<sup>4</sup> Ἡ δὲ πρόσθεν Διὸς ἀνιόχοιο  
 Ἔσσημένως ἄρυσεν ἀπ' ἀθανάτοιο καρήνου,  
 Σείσας ὄξυν ἄκοντα μέγας δ' ἐλαλίζετ' Ὀλυμπος  
 Δεινὸν ὑπὸ βρίμῃ γλαυκώπιδος ἄμφι δὲ γαῖα  
 Σμερδαλίον λάχρυσεν ἐκινήσῃ δ' ἄρα πόντος  
 Κύμασι πορφυρίοισι κυκώμενος, ἴσχετο δ' ἄλμυ  
 Ἐξαπύρς.—HOMER, *Hymn.* ii. 8.

<sup>5</sup> Φρίττονται δὲ τὴν Ἀθηναίαν, ἀπὸ τῆς τοῦ Διὸς κεφαλῆς ἐν ὅπλοις ἐκραγεῖσαν Ἠφαίστου μηχαναῖς, ὥς οὐ τέλεκυς. (PHILOST. *Imag.* ii. 27.) Ἀθηναὶ σὺν ὅπλοις ἀνέδοξε. (APOLLON. *Bibl.* i. 3, sec. 6.) Γενομένη δ' ἐκ Διὸς καὶ μόνον καὶ ἐκ τῆς κεφαλῆς οὐχ ἦγον τούτων θανασιτὸν τὸ τέταρτον ἐφελικετο, ὃ δὲ φασὶ συνεῖναι περὶ τὸ χάσμα τῆς κεφαλῆς τοῦ θεοῦ φάσμα. ἀνγεί γὰρ εἰθὺς ἔνοπλος, ὥστερ ἥλιος πᾶνίσχωνόμῳ ταῖς ἀκτίσιν, ἐνδοθεὶ κοσμηθεῖσα ὑπὸ τοῦ πατρὸς. (ARIST. *Orat.* i. 18.) See also EUSTATHIUS, *Comment. in Iliadem*, A, p. 83, Rome; LUCIAN, *Deor. Dial.* viii.; MARTIAN. *Capel.* vi.

Such an appearance of their virgin goddess, the personification of intellectual wisdom and excellency, commanding alike from her position and attitude, her casque and ægis, her spear and buckler,—glittering in all the brightness of the sun,—must have elicited a proud boasting, must have awakened a sacred fire in the breast of every Athenian citizen. On either side of Minerva would be Jupiter and Juno, seated on thrones, and the attitude of whose bodies, assisted by the diverging lines of their sceptres, would correspond to, and contrast with, the curved lines of the horses of Nike and Amphitrite, in the western pediment.

The position of the goddess before Jupiter would be conformable with the description by Philostratus, who says that,—

“Jupiter seemed to gasp with delight, as those who endure great labour for the accomplishment of some good, and contemplated his daughter, exulting at her birth.”<sup>(1)</sup>

Nor are we without authority from vase-paintings for this position of the goddess. On two vases she is represented as standing on the knee of Jupiter; on two others as standing



THE BIRTH OF MINERVA, ON A VASE IN THE MUSEO-ETRUSCO.

<sup>1</sup>Ο Ζεύς δὲ δασμαίνει σὺν ἡδοῇ, καθάπερ οἱ μέγαν ἐπὶ μεγάλῃ καρπῷ διακονήσαντες ἄλλον, καὶ τὴν παῖδα ἐξιστορεῖ, φρονῶν τῷ τόκῳ. PHILOST. *Imag.* ii. 27. So also by HOMER, Γῆρας δὲ μνηστὴρ Ζεύς.—*Hymn. ad Athen.*

before him;<sup>(1)</sup> and on another she is represented rising, *full-sized*, from above his head.<sup>(2)</sup> Another instance of this position is seen in the eastern frieze of the temple of Nike-Apteros, where Minerva appears standing between Jupiter and Neptune, the former of whom is enthroned, the latter seated on a rock.<sup>(3)</sup>

The vacant space in this part of the composition may be objected to, as contrasting too powerfully with the more crowded portions; but I have had a particular object in thus opposing it. I desire to express by this vacuity the ethereal firmament, as especially considered the province of this divinity, as the earth was that of Ceres, or the sea of Neptune.<sup>(4)</sup> Jupiter and Juno were also taken for this element: but Jupiter, as the centre of the universe, was considered as occupying the middle region of the heavens; Juno as the lower region; and Minerva, as the excellency of wisdom, and as proceeding from the head of Jupiter, was regarded as occupying the summit of the ethereal atmosphere.<sup>(5)</sup> Tzetzes describes Minerva as "the air or exhalation which moves heaven;"<sup>(6)</sup> Gyraldus, quoting Diodorus, Porphyrius, and Macrobius, says that ether was attributed to Minerva from "the unsullied purity of that element;"<sup>(7)</sup> and Eustathius to the same effect;<sup>(8)</sup> Martianus compares her to "ethereal fire;"<sup>(9)</sup>

<sup>1</sup> See ante, p. 364, note 1. The accompanying figure is from the *Mus. Etrus.* ii. 29. It is described as Jupiter and Juno, and some other deity, though it evidently represents Jupiter, Minerva, and Vulcan. It occurs on the same vase as the engraving in the next page.

<sup>2</sup> LENORMANT and DE WITTE, i. pl. 63.

<sup>3</sup> ROSS, SCHAUBERT, and HANSEN, *Akropolis von Athen.* p. 11. pl. xii.; GERHARD, *Annali dell' Inst.* xi. 61, tav. E. Behind these are the other of the twelve deities. Juno is most probably the figure seated in a throne at some distance from the scene; though, from the manner in which the standing figure immediately behind Jupiter holds her veil, she might have been taken for that divinity.

<sup>4</sup> SALLUST. (*Philos.*) *De Diis et Mundo*, cap. vi. Compare TZETZES, *Alleg.* 149.  
<sup>5</sup> PHURNUTUS, *De Nat. Deor.*; BEGER, *Theos. Bran.* iii. 219, 439; CREUZER, *Symb.* viii. sec. 29, vol. ii. p. 800.

<sup>6</sup> TZETZES, *ad Lycoph.* 17.

<sup>7</sup> *Hist. Deor. Syntag.* 338 A, 339 A B; DIOD. SIC. i. 12, sec. 7; FULGENTIUS, *Mythol.* ii. 3, de Min.

<sup>8</sup> EUSTATH. *Comment. in Iliadem*, A, p. 83, 123, *Rome.*

<sup>9</sup> MARTIAN. *Capel.* vi.



and, lastly, we learn that the blue eyes attributed to this divinity, were considered by some as having reference to the colour of ether.<sup>(1)</sup> It is in conformity with this belief, that I have hazarded the bold idea of representing her in what may be regarded as the too theatrical attitude of rising towards the apex of the pediment. This idea appears expressed in the accompanying engraving from the *Museo-Etrusco*, (ii. 29, but un-



THE BIRTH OF MINERVA, ON A VASE IN THE MUSEO-ETRUSCO.

explained,) where we find Jupiter, recognised by his thunderbolt and sceptre, before whom are Apollo and Eileithyia; the birth of Minerva being symbolized by a bird flying from the head of Jupiter. It is important to observe that it occurs on the same vase as the figure in page 372.

In the oration by Aristides, in honour of this divinity, we read,—

“But as she was born in the summit of heaven, and from the summit of Jove’s head, so the summits of all cities [acropoli<sup>(2)</sup>] were dedicated to her,” &c.<sup>(3)</sup>

<sup>1</sup> EUST. *Com. A.* p. 124; DIOD. *Sic. i.* 12, sec. 8.

<sup>2</sup> PHURNUTUS, xi.

<sup>3</sup> “Ἀτι δὲ ἐκ κορυφῆς τοῦ Ὀλύμπου καὶ ἐκ κορυφῆς τοῦ Διὸς γενομένη πόλεων τε πασῶν τὰς κορυφὰς ἔχει κατὰ κράτος ἐς ἀληθῶς ἡμεῖς ἡμεῖς (vel ἡμεῖς) καὶ τῶν ἀνθρώπων ὅσοι βοοφύλας οὐκ ἄτη παρὲς τὰς κεφαλὰς, Ἀθηναῖα δὲ ἀνέχει καὶ ἐμβατεύει, τηροῦσα τὸ σύμβολον τῆς αὐτῆς γενέσεως.—ARIST. *Orat. i.* 19.

"She occupies," says Diodorus Siculus, "the summit of the universe,"—

τὸν ἀνώτατον ἐπέχει τόπον τοῦ συμπαντος κόσμου.<sup>(1)</sup>

She was said to be born from the summit of Jupiter's head, because ether is the highest portion of the atmosphere,—

αἰθέρα τὸν ὑψηλότερον ἔχει δῖα.<sup>(2)</sup>

*Eandem hanc alii ætherium verticem, et summmitatis ipsius esse summam dixerunt.*<sup>(3)</sup>

*Ego in altissimis habitavi, et thronus meus in columna nubi.*<sup>(4)</sup>



THE BIRTH OF MINERVA. (PASSERI, LUCERNE).

We meet with a striking illustration of this hypothesis in an ornamental lamp, given by Passeri, (*Lucerne*, i. tab. 52,) where we behold Minerva just issued from the head of Jupiter, floating horizontally in the air.<sup>(1)</sup>

Another still more hazardous conjecture, and one which I propose with the greatest diffidence and hesitation, is that of attributing wings to Minerva; but although hypothetical, I have thought it necessary to express these wings in the drawing,

<sup>1</sup> DIOD. SIC. i. 12, sec. 7.

<sup>2</sup> EUSTATH. *Comment. in Iliad.* A, 124.

<sup>3</sup> ARNOB. *advers. Gent.* p. 118, lib. iii.

<sup>4</sup> *Script. Rev. Myth.* 8vo. Cellis, 1834, iii. 10. The highest god: see CREUZER, *Symb.* ii. 800.

<sup>5</sup> Compare MILLIN. *Pierres gravées*, xvi. where she is represented as moving noiselessly in the air, precisely as she is described by Homer, *Il.* E 778.

that the reader may form a more definite impression of the effect produced. I have been led to adopt this idea, from the objection which might be made to a figure being represented as suspended without support. It is quite certain that Minerva was fabled by the ancients as having wings to her feet and helmet;<sup>(1)</sup> and it has been very reasonably supposed that such appendages were intended as indicative of wings on shoulders.<sup>(2)</sup>

Thus spake the goddess:

Then on her feet her feather'd sandals bound,  
Immortal, bright with gold, which o'er the ground  
And waters swiftly bore, mid space around.<sup>(3)</sup>

So Cicero, to the same effect,—

"Pallantis . . . cui pinnarum talaria affigunt," (affigunt.)<sup>(4)</sup>

Tzetzes gives us this origin of the fable. He says that the goddess Pallas, having slain her father, the winged Pallas, furnished herself with his skin as an ægis, and adapted his wings to her feet.<sup>(5)</sup> We know, moreover, that Minerva was commonly represented, among the Etruscans, as having wings on her shoulders;<sup>(6)</sup> and there is a passage in Aristophanes from which we might imagine that she was also thus regarded by the Greeks:—

ὃ γ' Ερμῆς

Πέτεται, θεὸς ὦν, πτέρυγας τε φορεῖ, πάντοι γε θεοὶ πάνι πολλοί.

Αἰθρία Νίκη πέτεται πτέρυγων χρυσαῖν.<sup>(7)</sup>

Æschylus represents the chorus of the Eumenides as placing the people under the protection of Minerva's wing—

Παλλάδος δ' ὑπὸ πτεροῖς

Οὔτας ἀζεταί πατήρ—<sup>(8)</sup>

<sup>1</sup> See ECKHEL, *Doctr. Num. Vet.* v. 84.

<sup>2</sup> INGHIRAMI, *Mon. Etr.* ii. 643.

<sup>3</sup> "Ὡς εἰποῦσ' ὑπὸ ποσσὶν ἰδέσαστο καλὰ πόδια,

Ἀμβρόσια, χρύσεια, τὰ μὲν φέρον ἡμῖν ἐφ' ὀγρήν,

Ἡδ' ἐν' ἀπείρονα γαῖαν, ἅμα πνοῆς ἀνέμοιο.—HOM. *Od.* i. 96-98.

<sup>4</sup> CIC. *De Nat. Deor.* iii. 23.

<sup>5</sup> TZETZES, *ad Lycoph.* 155.

<sup>6</sup> Among the instances which may be quoted of Minerva's being represented with wings, are a small bronze statue found at Orte in 1837, published in the *Mus. Etrus.* i. 43; a bronze mirror in the Brit. Mus., on which are figured Minerva, Hercules, and Hydra; and other monuments published by Inghirami, *Mon. Etrus.* i. 54; ii. 34, 65.

<sup>7</sup> ARISTOPH. *Aves*, 572-4.

<sup>8</sup> ÆSCHYL. *Eum.* 999.

and from Eustathius it would appear that these wings, which from her sublime flight were attributed to her in common with Victory, were golden,—

Διὸ καὶ ὁ μῦθος τὴν Νίκην οὐ μόνον χρυσαῖν πτερυγοῖν ἐχόσμησε διὰ τὸ κατ' αὐτὴν καὶ πολυτίμητον καὶ ὡς ἐπ' αὐτὴν μεταωροπόρον, ἀλλὰ καὶ τῇ Ἀθηνᾷ εἰς ταυτὸν ἔγωγεν. ὡς δὲ οἱ καὶ ὁ γράφας τὸ Ἀθηνᾷ ἢ Νίκῃ, (1)

which Phurnutus in some measure confirms, by stating that wings were attributed to her by reason of her rapid motion, which no impediment could stay,—

Πτερωτὴ παραιοῦσθεται, διὰ το ὀξύροπον καὶ ἐμμετάβολον τὸν παρατάξων. (?)

Bearing, therefore, in mind the fact that Minerva only, of all the gods, was called Nike,—

ἡ μόνη μὲν ἀπάντων θεῶν, ὁμοίως δὲ πασῶν, οὐκ ἐπώνυμος τῆς νίκης ἐστίν, ἀλλὰ ὁμώνυμος, (?)

we may consider that the figure of Nike, which we find on so many coins, the obverse of which bear the head of Pallas, is



intended to denote the unity of the two goddesses in the form of Athena-Nike, the deity so generally venerated by the ancients, and most especially by the Athenians.

There are many passages in which Minerva has this title appended to her own name, as—*Níkē τ' Ἀθήνα*, (SOPHOC. *Philoct.* 134.); *Níkē Ἀθήνα*, (EURIP. *Ion*, 1529). In the frieze of the temple of Victory-Apteros, at Athens, it is Minerva who

<sup>1</sup> EUSTATH. *Comment. in Iliad.* A, p. 879, lin. 63, fol. Rom. 1542.

<sup>2</sup> PHURNUTUS, *De Nat. Deor.* xx. 189, *De Pallade.* "Minerva is called Pallas, allegorically, because of the rapid motion of Providence, or Intelligence, for whom she is considered typical."—EUSTATH. *Comment. in Iliad.* p. 84, *Rome.*

<sup>3</sup> ARISTIDES, i. 29, *Orat. in Pallad.* For other examples see EUSTATH. *Il.* xi. 64, fol. 879; MEURSIUS, *Cecr.* viii.; HARPOCRATION and SUIDAS, *sub voce.*

<sup>4</sup> The example here given is from COMBE, *Vet. Pop. et Reg. Num.* Ath. No. 138.

appears as Victory, standing before Jupiter;<sup>(1)</sup> and in the poets we find frequent instances of Minerva being called by this name:—'Αθήνην, Νίκην ἢν καλέουσιν, (NONNUS, *Dionys.* xxvii. 63); ἱερὸν 'Αθηνᾶς πεποιήται καλουμένης Νίκης,<sup>(2)</sup> (PAUS. i. 42, sec. 4); παγκρατὲς κόρα, (ARISTOPH. *Thesmoph.* 325); ὦ πότνια Νίκα, (EURIP. *Ion*, 460); ὦ μεγὰ σεμνὰ Νίκα, (Id. *Orest.*, *Phoen.*, *Iphig. in Taur.*, *ad finem*; ἐξ οὗ καὶ Νίκη προσαγορεύεται, (PHURNUTUS, xx. 188). Were it not for the identity of these two goddesses, we might regard some passages as of doubtful authority. Some poets make Minerva assist Jupiter in his battle with the giants, and others Victory; and in Philo (PH. *Judæus*, *Lib. de Mun. Opif.*) we find Victory, and not Minerva, springing from the head of Jupiter.<sup>(3)</sup>

*Athena-Nike* was, therefore, the tutelary deity of Athens, and from her statue in the temple of Nike-Apteros being represented without wings, it clearly appears that wings were formerly attributed to her. Moschopolus tells us that the statue of Minerva at Athens was in the form of Victory.<sup>(4)</sup>

Νικῶ, τὸ περιγίνομαι. ἀφ' οὗ Νίκη, ἡ τροπαιοῦχια, καὶ ῥῶων 'Αθηνᾶς παρὰ τοῖς 'Αθηναίοις.

Aristophanes, in the preceding quotation, gives golden wings to the figure of Victory.<sup>(5)</sup> Eustathius, as we have seen, gives them in like manner to Minerva; and Ulpian states that the wings of *Athena-Nike*, in the Acropolis, were stolen by wicked persons.

Τῶν δὲ ἐξηγούνται Νίκης 'Αθηνᾶς εἶναι ἄγαλμα ἐν τῇ ἀκροπόλει. Ταύτης δὲ τὰς πτέρυγας, χρυσᾶς οὖσας, ἐπεχέλησάν τινες κακοῦργοι ἀφελίσσαι. <sup>(6)</sup>

<sup>1</sup> See page 373.

<sup>2</sup> See HARPOCRATION, *sub voce*.

<sup>3</sup> CUPER. *Apoth. Hom.* p. 172. "Quod si accipit res fidem, nulla est ergo Mentis filia, nulla Victoria, nulla Iovis enata de cerebro, inventrix oleæ, nulla magisteris artium, et disciplinarum varietatibus erudita."—ARNOB. *adv. Gent.* p. 118, lib. iii.

<sup>4</sup> See MEURSIUS, *Attic. Lect.* i. 20.

<sup>5</sup> ARISTOPH. *Aves*. See also ATHENEUS, v. 197, d.; PRUDENT. *cont. Symm.* ii. 27.

<sup>6</sup> ULPIAN. *Orat. cont. Timocr.* See MEURSIUS, *Attic. Lect.* i. 20; and CUPER. *Apoth. Hom.* p. 172.



It does not appear whether the statue here referred to was that described by Harpocration, from the authority of Lycurgus and Heliodorus, as existing in the temple of Nike-Apteros at Athens,<sup>(1)</sup> or whether it was that of the temple of the *Winged Victory*, which we learn from Pausanias also existed at Athens;<sup>(2)</sup> the fact, however, is equally important, as establishing that Athena-Nike was occasionally represented by the Athenians as having wings.

Thus, then, notwithstanding the boldness of the conjecture, I have given wings to the statue of Minerva in the eastern pediment, from the consideration that, if wings were ever attributed to this divinity, they would naturally be exhibited at her birth, when she issued from the head of Jove completely armed, in perfect stature, and in possession of all her attributes; when she was represented leaping forth from the paternal head, and, as it were, springing up into her ethereal regions; when, from the difficulty of representing her in this position in a group of sculpture, the artist may be supposed to have gladly availed himself of such assistance, especially as the lines of the wings would form so appropriate a finish to the apex of a pediment; when he would thus obtain the greatest contrast to the statue in the Naos, at the same time that the statue of *Athena-Nike* in the pediment would be in harmony with that of *Athena-Nicephora* below; and lastly, when the appearance of their goddess, with wings extended, would be typical of rising to victory; in close connexion with which would be the brazen-gilt shield affixed to the eastern architrave.<sup>(3)</sup>

The idea of thus representing her is rendered probable by the fact, that many temples had their pediments crowned with figures of Victory. Thus, that portico at Sparta, which faced the west, had two pediments, on each of which there was a Nike, the gift of Lysander, and which were monuments of a double

<sup>1</sup> HARPOCR. *Lexicon*, Νίκη Ἀθήνῃ. PAUS. i. 22.

<sup>2</sup> PAUS. ii. 30.

<sup>3</sup> There were shields also in the western architrave, but only half as many, and without inscriptions.

victory;<sup>(1)</sup> and in the Temple of Jupiter, at Olympia, a golden Victory occupied the apex of the pediment, beneath which was a golden shield, bearing the Gorgon's head, with the inscription of its dedication, on occasion of a certain victory.<sup>(2)</sup>

Behind Jupiter is Vulcan,<sup>(3)</sup> whose form and character are admirably represented in an ancient bas-relief of the Museo Rondinini, the form of which is nearly identical with that of the



THE BIRTH OF MINERVA, BAS-RELIEF IN THE MUSEO RONDININI.

Beugnot vase;<sup>(4)</sup> he has just struck the blow, and is retreating hastily from apprehension of the effect which might ensue; but in retreating he turns his head, and beholds, with amazement and admiration, the beautiful being so wonderfully brought forth. The admiration on his countenance, and the finger drawn to his lip, are admirably expressive of the desire which animated his breast:—

"Vulcan appeared to entertain doubts in what manner he might best conciliate the goddess, and lavish his enticements upon her, for he perceived that she was born completely armed."<sup>(5)</sup>

Altogether, the figure in the Winckelmann monument is so

<sup>1</sup> PAUS. iii. 17, sec. 4.

<sup>2</sup> Id. v. 10, sec. 2.

<sup>3</sup> Vulcan is said to have opened the skull, because, allegorically, he is taken for fire. See EUSTATHIUS, *Comment. in Iliad.* p. 83, *Edit. of Rome.* The vase painting of the birth of Minerva in the *Museo Etrusco* (ii. 39) is very remarkable; as, instead of a hatchet, Vulcan is represented as effecting the delivery by the motion of his hand.

<sup>4</sup> WINCKELMANN, *Mon. Ined.* ii. *front.*

<sup>5</sup> Καὶ ὁ Ἥφαιστος ἀπορεῖν ἔοικεν, ὅτε ποτὲ τὴν θεὸν προσαγάγῃται· προανέλθεται γὰρ αὐτῇ τὸ δάκρυ ὑπὸ τοῦ τὰ ἔπλα συνεκφύειν αὐ.—PHILOST. *Imag.* ii. 27.

statue-like, so suited to the composition as well as to the myth, and so superior to the other representations of this divinity, which, however, as in the Beugnot vase, are found to partake of the same general character, that we might almost imagine it has been copied, perhaps by several gradations, from the pediment of the Parthenon.

If we adopt this figure, we must then accept that of Jupiter, shown in the same bas-relief, opposite to whom would naturally be the figure of Juno, enthroned in like manner; and as, from the attitude of Vulcan, it is evident he beholds the virgin goddess, and as she is not represented over the head of Jupiter, we may feel assured that, were the bas-relief complete, she would be seen in front of the Father of Olympus. I have already alluded to the correspondence and balance required in the *æroï* of a Grecian temple. These characteristics are particularly observable in the western pediment. Not only do the statues of Neptune and Minerva exhibit great uniformity, combined with great variety of detail and expression, but the other figures of the pediment correspond in number and attitude. Thus, the curved lines of the horses of Minerva on one side answer to those of Neptune<sup>(1)</sup> on the other; the figure of Thetis to that of Erechtheus; the figure of Nike to that of Amphitrite; and so with the remaining figures of the pediment.

Now we must believe that a similar regularity reigned in the eastern pediment. I have placed Juno opposite to Jupiter,

<sup>1</sup> The car of Neptune has been supposed by some writers to have been drawn by *hippocampæ*, or sea-horses; and this opinion has been supported by the figure of a dolphin apparent in Carrey's drawing, and by the fragment of a serpent, which was supposed to have formed the extremity of one of these animals. The fragment, however, has been clearly shown by Lloyd to have belonged to the statue of Cecrops, in the western pediment (*Class. Mus.* v. 429); while the introduction of the dolphin would be less necessary with *hippocampæ* than with horses. I see no reason, therefore, for altering Mr. Cockerell's more artistic conception, especially when we consider the Athenian myth of Minerva's having created the olive, and Neptune the horse. See the authorities relative to Poseidon Ἰππιος, quoted by Mr. Cockerell, (*Desc. Anc. Marb. Brit. Mus.* vi. 22). The car of Neptune in the Temple at Corinth was drawn by horses, not sea-horses.—PAUS. ii. 1.

for although, on some monuments, we find her standing or seated at some distance, to indicate the jealousy with which she regarded the circumstance of Jupiter's giving birth to a daughter without her intervention, we find her on many others identified with Eileithyia, and taking an active part in the delivery. This position of the goddess is, therefore, in entire accordance with these authorities, and with the painting by Cleanthes, <sup>(1)</sup> of which Philostratus says,—

"Even Juno, instead of feeling anger on that account, rejoiced not less than though she had been her own offspring."<sup>(2)</sup>

We now want a figure, the attitude and character of which shall correspond with that of Vulcan. The most suitable personage for this position is Eileithyia. The part which she occupied in the event is very identical with that of Vulcan. They each assisted in the birth, and each rejoiced at its success. Vulcan was seized with admiration at the beauty of Minerva. Eileithyia is supposed to denote her joy by the attitude in which she is constantly represented on the vase-paintings. After the fearful blow, Vulcan retreats hastily from the apprehended anger of Jove; while Eileithyia, having performed her task, and her presence being no longer necessary, retires from the assembly of the gods. We thus get a figure, not only whose character, but whose pose and action correspond with those of Vulcan; and it is remarkable that, though these two figures have been taken from different monuments, their attitude and posture should so perfectly agree.

Among the Elgin marbles is a fragment, representing two feet and a trunk or prop. It is published in the *Desc. Ant. Marb. Brit. Mus.* vi. 6. It has been imagined that it formed part of the statue of Minerva in this pediment, and that the trunk between the feet represented the celebrated olive tree. Professor Welcker, however, clearly shows that the trunk cannot be iden-

<sup>1</sup> Cleanthes of Corinth. See STRABO, viii. 343.

<sup>(2)</sup> Καὶ οὐδὲ τῆς Ἥρας τὸ δαυδὲν ἐστῆκεν γέννησε δὲ, ὡς ἂν εἰ καὶ αὐτῆς ἐγένετο.—PHILOST. *Imag.* ii. 27.

tified with the olive, as "the stump interferes just with the beginning of the calf of the leg: it would, therefore, necessarily have been covered by the garment of Pallas." These feet have



ELGIN MARBLE, BRITISH MUSEUM.

been supposed to belong to a statue of Minerva, Neptune, or Mars: in fact, like Cinderella's slipper, they have been tried upon every figure but the right. That they could not have pertained to the statue of Neptune, is evident from the comparatively small size of the feet; while their feminine character would preclude their being appropriated to Mars; and that they could not have formed part of the statue of Minerva, appears from the fact, that the trunk of the tree inclines inwards. For this circumstance not only shows the impossibility of its being the olive tree, but it proves that it could not have belonged to a statue of Minerva, the broad folds of whose drapery, being solid, would neither have required nor permitted the introduction of such a spur to strengthen it. From the delicacy of the feet, they are regarded by sculptors as having belonged to a female statue; they can, therefore, have appertained only to some deity, as Diana, whose short tunic, reaching to the knees, could afford no sufficient security to the statue; and which would require exactly such a prop as the trunk or spur, to strengthen the otherwise too delicate legs: the whole upright of the statues being thrown on their bases, and the statues being in nowise relieved by connexion with the upright slabs of the tympanum. It is probable, however, that this trunk was inserted for other reasons than mere stability. From the receding direction of the trunk, it would seem that it went behind the leg, and re-



appeared again at the back of the figure; and we may, therefore, assume that the sculptor, considering the nature of Diana, as goddess of woods and hunting, gladly availed himself of so characteristic an emblem of the deity, in order to give strength and support to his work. <sup>(1)</sup>



But another circumstance of great importance observable in these feet is, that the smaller toes are not expressed, but a separation is only visible between these and the great toe. Now, from the care with which the sculptures of the Parthenon are invariably finished, as well the parts concealed from the eye, as those exposed—those which were never seen after the statue was raised to its position in the pediment, as those which were most prominent, we cannot conceive that these feet would have been thus imperfectly expressed from motives of mere negligence. This imperfect representation of the toes is, therefore, unquestionably caused by their being concealed by the texture of the *cothurnus*, or hunting-boot; and thus we have another evidence of these feet having belonged to the goddess of the chase. <sup>(2)</sup>

The left foot measures fifteen inches in length, which, multiplied by six, gives us the height of the statue at seven feet six inches, to which we must add something for the more delicate proportions of the female form. Perhaps a surer guide would

<sup>1</sup> It is scarcely necessary to refer to examples of the introduction of a tree in statues of Diana, it being a frequent practice of the ancients to make use of a trunk as a support to naked or half-naked statues, as Apollo, Mercury, or Diana: but there are two statues of this goddess, at Versailles and the Vatican, where we find a tree introduced, although the figure is sufficiently strengthened by a dog and a fawn. See MÜLLER, *Denkm.* 156, 158.

<sup>2</sup> The *chaussure efféminée*, which Millingen objected to in the attribution of these feet to Minerva (*Annali*, iv. 200), is in perfect accordance with the attributes of Diana.

be, the length of stride between the feet, which is three feet. We shall not be very wrong if we suppose the statue to have been eight feet in height; and we shall find that this is precisely the height offered us by the void space of our pediment, after filling in the five central statues. From the position of the feet, we must place Diana on the south side of the pediment. The feet are not only important in establishing the identity of the divinity and the position in the pediment, but also in indicating the attitude of the figure. The feet are stretched out, and, as has been said, about three feet asunder: the left foot is placed firmly on the ground, while the right scarcely touches it. She was therefore in rapid motion, hasting to the scene of the wonderful delivery: and it is this position of the goddess in the Beugnot vase, and which we so constantly see on medals and other monuments,<sup>(1)</sup> which has induced me to adopt its character as best adapted to the Parthenon pediment. <sup>(2)</sup>

Next to the immediate actors in the scene, as Vulcan, Juno, and Eileithyia, (with whom, indeed, she is often considered to be identical,) there is no deity whom we might so naturally expect to be present as Diana, <sup>(3)</sup> both from her presiding over travail, and from the affinity of her character with that of Minerva. <sup>(4)</sup>

Σὺ (Athena) καὶ παῖς ἡ Ἀργενῆς  
 Δύο θεαί, δύο παρθένοι,  
 Κασιγνηταὶ σέμναι τοῦ θεοῖου.<sup>(5)</sup>

The attitude of Diana, bending forward, composes well with that of Vulcan retreating backward, the corresponding lines of whose figures would thus present a perfect balancing of parts, forming by themselves an independent group, subsidiary to the whole composition; a practice which we find so constantly observed in all monuments of pure Greek art.

<sup>1</sup> See MÜLLER, *Denkm.* ii. 156-160.

<sup>2</sup> Compare HENZEN, *Annali dell' Inst.* xiv. 91.

<sup>3</sup> It is probable that Diana is frequently represented on the vases in the form of an Eileithyia. Dr. Braun endeavours to prove the identity of this goddess with the *Thalna* of Etruscan mirrors.—*Annali*, 1851, p. 146.

<sup>4</sup> NONNUS, xlij. 371.

<sup>5</sup> EURIP. *Ion*, 468-470.

Corresponding to this group, we have on the north side the figure of Eileithyia, tallying with that of Vulcan; in connexion with whom we require another figure, the attitude of which shall agree with that of Diana.



BUST OF NIKE, IN THE EASTERN PEDIMENT.

This figure I should suppose to be Nike (Victory); the bust of which, now in the British Museum, was discovered prostrate within the tympanum, after the execution of Carrey's drawings. The precise situation in which it was found has not been recorded,<sup>(1)</sup> but it has always been placed contiguous to the Fates. This position of the figure is seemingly confirmed by its resemblance in attitude and size to the figure of Iris on the opposite side; but it is very important to observe, that its aspect towards the centre of the pediment does not correspond with the outward-bound direction of the Iris. The uniformity of size with the Iris, the Parcae, and the Eleusinian deities, constitutes, it is true, an objection to its being placed in the position I would assign to it; but in the celebrated Beugnot vase, we not only

<sup>1</sup> See VISCONTI's *Catalogue of the Elgin Collection*, in Appendix to Report from Select Committee. "Noch gehört zu diesen Giebel ein torso einer weiblichen Figur, wahrscheinlich einer Nike, welchem man indess keinen bestimmten Platz anweisen kann." MÜLLER, *Denkm.* Bd. i. p. 14, Taf. xxvi. 120.

find the figure of Nike opposed to that of Diana, but we see it represented smaller than any other figures of the composition.

This diminutive proportion has been attributed to the accidental circumstance of the vase being a *Pelike*, and one of the handles coming immediately above the figure: but the artist would scarcely have distorted his composition for this cause; besides which, there is no corresponding reduction of figure under the other handle. The real object of the artist I believe to have been, to thereby represent the recent birth of Minerva, and her subsequent power and glory.

The goddess Nike is generally represented with some other deity. But as Peitho was considered as an attribute of Aphrodite, so, in an especial manner, may Nike be regarded as immediately self-connected, and, indeed, identical with Minerva.<sup>(1)</sup>

Being, then, at least so far as this individual Nike is concerned, called into existence simultaneously with Minerva, it is very natural that we should find her represented of diminutive proportion at the birth of her companion goddess. Only in two other vases is her figure introduced, and there of still more diminutive size.<sup>(2)</sup>

This figure, then, in our pediment, like that on the Beugnot vase, is hastening to greet the victorious goddess, rising into existence contemporaneously with herself.

An examination of the trunk in the British Museum will show, that the right thigh of the figure is raised. She must consequently have been in a similar posture to the Diana on the opposite side, having the right leg elevated by an inequality of the ground.

The individual action of the foregoing figures would require a change of grouping in the remaining statues. As, in the pre-

<sup>1</sup> See INGHIRAMI, *Mon. Etr.* ii. pl. 71.

<sup>2</sup> See page 389. In both these instances, she is represented under the throne of Jupiter. It is strange that this figure in the Beugnot vase should not have been fully recognised. Forchhammer takes it for Iris; and Gerhard, Lenormant, and De Witte, for Nike or Iris.

vious groups, the figures have been separated by large vacuities, we now require close compact masses, to give variety and relief to such arrangement; and as great variety of line has been obtained by the action of the preceding figures, we now require a balance, in the repose of the perpendicular line. To answer this requirement, I would suppose two figures to close in the central composition on each side; and, as the central figures are all in one plane, these, I would imagine, might stand in a double line, but somewhat obliquely with respect to each other. We should thus have the whole central part of the pediment devoted to the general subject of representation; the extreme figures of which would form a kind of frame to the composition, and distinguish it effectually from the supplementary groups of the extreme angles. These figures would probably be—Apollo and Neptune on one side, and Mars and Venus on the other.<sup>(1)</sup>

It is not merely in the outline that the Greek sculptor would seek to give beauty and variety to his composition. Were the decoration in painting or in bas-relief, this only would be required; but the sculpture of these pediments was in complete relief: each figure was a statue, and therefore capable of changing its effect at each movement of the spectator. Confined in his composition by the raking lines of the pediment, he sought to give diversity and freedom, not only by greater or less height, by variety of action, but also by the relative projection of the figures on the horizontal line. Thus, the pedimental sculpture of a Greek Doric temple must have produced an extraordinary effect. Viewing it at a distance, it would present a general outline of the whole composition; but as the spectator approached, and as the sun rose or declined, the groups would appear to move and take up a new position at every change of posture. An ordinary pediment of bas-relief would present the same feature, whether the spectator viewed it in front or in an oblique direction; but a Doric pediment would present a

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<sup>1</sup> See note on following page (389).



totally different aspect from these three points of view. From one extremity he would see the faces of some of the figures, which would in their turn disappear, and others become visible, as the spectator approached to the other end. But, independently of this change of appearance, the different positions of

<sup>1</sup> (referred to in p. 388). The selection of these deities is confirmed by the following table, which has been framed chiefly from the Minerva series, published by Lenormant and De Witte, by which the reader will be able at a glance to perceive how frequently each divinity is introduced. Those marked with an (\*) are published in this essay.

[illegible]

the statues, in single or grouped combinations, in greater or less projection, would exhibit a constant variety of form and outline, productive of the highest beauty. It is this variety of plane which must have given such especial richness and fulness to the composition, and rendered it so admirably in character with the nature of the architecture. By this position of one figure before another, the artist obtained for his groups, as viewed from below, an apparent difference of height, which gave the greatest variety of outline to a composition, the sides of which were confined by straight lines. It is this union of the straight lines of the architecture with the rich and broken lines of the sculpture, which must have given such inherent grace to the temple. Thus, the formal outline of the triangle, by the abrupt gradations of size, by the avoidance of straight lines in the composition, by the ease and natural simplicity of the attitudes, by the artful position of the groups—keeping some within, and some without the line of projection; debasing some and raising others above the line of the raking corona, was rendered one, the most effective for the exhibition of works of sculpture.

By these pedimentâ, Phidias has shown how the true artist rises superior to his difficulties—nay, how difficulties in the hand of a true artist often become conducive to fresh beauties; for here we find sculpture applied to the architecture, not in the quaint simplicity of archaic types, not in the vulgar elaborateness of Roman examples, or in the frigid poverty of modern times, but with that exquisite beauty and simplicity of grace, with that boldness of design and delicacy of execution, with that freedom and richness, with that variety and fulness, and with that happy adaptation to the necessities required—that, instead of being mere ornamental sculpture, (*sculpture de bâtiment*), we are forced to consider them as the very perfection of art; and instead of regarding the architecture as a formal and separate design, we are compelled to regard the whole temple as one indissoluble whole—as the emanation of one master mind.

In treating of the central group of the eastern pediment, the lost figures of which I have thus attempted to replace, it is

requisite to consider its connexion with the side or terminal groups. Now, it is remarkable, and some have deemed it unaccountable, that the figures composing these groups should be directed outwards, and should appear so utterly indifferent to the main action. But this changing of the position of the end figures would not only give a greater variety of posture to the whole composition, but enable the artist to represent these figures in more easy and natural positions. The principal advantage, however, would be, that in whatever point the spectator might stand, he would always see the nearest figures of the composition facing him, instead of having a repetition of broad flat surfaces.<sup>(1)</sup>

But we must not suppose that the attitude of these figures was contrived solely with reference to their artistic effect; it may be regarded as certain that some latent signification was connected with this arrangement. Brøndsted interprets the two extreme compositions to signify — “*Jour et Nuit, Orient et Occident, lever et coucher du soleil, commencement et fin,*” and his opinion upon this point has been generally accepted. I conceive, however, that the sculptor has wished to represent something more than this; and if we examine other monuments, in which the sun and moon are represented, we shall perceive that such emblems are intended to convey some other meaning than the mere rising and setting of the sun, the period of noon-day, or the relative position of east and west, and that they are always introduced with some specific meaning. In the example before us, either they are expressive of the effect of wisdom bursting upon the world, or they are intended to designate the moment of birth, and the communication of the event by the heralds of Olympus.

In the former hypothesis, Minerva springs forth impetuously and fully armed from the head of Jupiter. She shakes her lance — Olympus trembles, the earth groans, the sea is troubled, the sun holds back his horses. With the appearance

<sup>1</sup> The end figures of the western pediment, though reclining in a similar position to those of the eastern, are varied from them, by being represented not only as rising from their couches, but as *turning round*, so as to behold the action taking place in the centre of the pediment.

of Minerva, no darkness can longer exist, no mist any longer remain: the clouds which had concealed her presence are removed, the goddess has burst to light, and wisdom is revealed;<sup>(1)</sup>

“La vérité s'en échappait, toute jeune et toute belle.”<sup>(2)</sup>

But this supposition, though it gives a sublime motive to the introduction of Helios and Selene, leaves the former difficulties respecting the other figures of the side groups unremoved; and it is therefore that I consider the second hypothesis as more natural, and more satisfactory.<sup>(3)</sup>

<sup>1</sup> See CREUZER, *Symb.* ii. 759.

<sup>2</sup> J. H. MERLE D'AUBIGNÉ, *Hist. de la Reform.* i. 61.

<sup>3</sup> The first monument I would adduce is the description of the Delphic peplos, in the *Ion* of Euripides, (114,) in which the moon and stars are represented in the centre, the sun setting in the west, and Aurora rising in the east. In this case, it is true, Helios and Eos merely express the period of time of the subject represented—the hour of midnight: but it must also be confessed that their introduction is not arbitrary, but full of meaning.

A similar example is seen in the bas-relief of an altar to Artemis-Selene, in the Louvre, and published by Bouillon, (*Musée*, iii. 69,) and by Müller, (*Denkmaler*, bd. ii. 190.) It represents Diana as the new moon; beneath whom is a head, indicating the ocean. On the left is Lucifer, or the morning-star, distinguished by a star and an upright torch; and Hesperus, or the evening star, appears with another star and an inverted torch on the right.

Another example is exhibited on the arch of Constantine, on the east and west sides of which we find Sol and Luna, which are probably introduced, not merely to distinguish their relative situation, but to denote the conquests of the Roman empire in the two principal divisions of the ancient world.

A third example occurs in the description by Pausanias (v. 11) of the bas-relief ornamenting the pedestal of the statue of Jupiter in the Temple at Olympia, and which represented the birth of Aphrodite. Here the figures of Helios and Selene have no relation to time, but are symbolical of the twofold nature of the planet Venus—as Phosphorus (Lucifer) and Hespera (Vesper): or, if the planet be considered as not sufficiently connected with the Cyprian goddess, then these symbols might have reference to her being the parent of all mankind; or, they would indicate the universal dominion of the Mother of Love.—See MILLIN. *Mons. Ined.* 318, 322; *Anthol.* ii. 113.

Other examples occur, in which the Sun and Moon are introduced to designate the universal power of the sovereign ruler of the gods and men. In a bas-relief given by Piranesi, (*Magnif. ed Arch. de' Rom.* 198; MÜLLER, *Denkm.* ii. 13,) is a representation of the three Capitoline deities in the centre of a pediment, between which are the cars of Day and Night; and in the one angle of the pediment which is preserved to us, there is a tree and a reclining figure, to indicate the earth; some

Under the figure of the setting sun, Selene, "the eye of night," (*ÆSCHYL. Sept. 390.*) appears a significant emblem of that  $\zeta\phi\phi\sigma$ ,

ocean-god having probably corresponded on the other side as an emblem of the sea. Similar to this is a coin of Nicæa, representing Jupiter as the centre of the universe, surrounded by Helios and Selene, Gæa and Pontos; the whole enclosed by a circle containing the twelve signs of the zodiac (*MIONNET, Suppl. v. 78; MÜLLER, Denkm. ii. 26*); and precisely similar in signification is a gem, on which we see Juno, with the heads of Helios and Selene appearing as ornaments to her throne. (*LIPPERT, Daktyl. Scrin. i. 25; Denkm. ii. 65.*) Similar instances occur in a lamp published by Beger (*iii. 439, lit. H*); and in a gem given by Inghirami (*Mon. Etr. vi. pl. c. 2.*) In none of these instances, therefore, do the sun and moon indicate the period of noon-day; much less are they inserted as mere artistic decorations; but in every such instance we find them introduced with some specific meaning.

But another more important instance to our argument, is exhibited on a sarcophagus in the church of S. Lorenzo, (fuora le mura), at Rome. On the lid of this sarcophagus is a bas-relief, which Ficoroni considers to "represent the birth and death of the deceased person; for at one extremity is a figure in a quadriga, assisted by a Victory, who urges the horses to the ascent of a mountain;\* at the further extremity is another figure, in a biga, giving the reins to the horses, which fall headlong to the ground; and above them is a Genius, in the act of covering them with a mantle." (*FIGORONI, Le Vestigia di Roma Ant. p. 117.*) In the centre of the composition, under a canopy, there is what appears to be the standing figure of the deceased; on the right of whom is Tellus, and, on the left, Abundance, or some other divinity; next to whom are the Dioscuri, as protectors of man.

The end figure of vase 59 of Lenormant's Minerva series appears to be Hades; the end figure of vase, pl. 63, is interpreted as one of the Fates, while the figure at the opposite extremity, taken for Peitho, appears rather to represent Proserpine (Compare *MILLIN, Pierres Gravées*, pl. 50, 51), or Ceres; and the end figure of vase, pl. 64 and 65, is considered by the Editors of the Brit. Mus. Vase Catalogue to represent Hades, while the figure at the opposite extremity appears to be a Demos. If this interpretation be correct, we have in the latter two vases an additional confirmation of the theory which is now proposed.

Here, then, we have the sun and moon represented as emblems of life and death; and it is with this same signification that I would interpret these figures in the eastern pediment. It may appear to some unnecessary to have made so long a digression, in order to prove the connexion between sunrise and sunset, and the dawn and decline of life; but the interpretation I am desirous of giving to the end groups of the eastern pediment is new, and I have therefore thought it requisite to bring forward these several authorities in support of my argument.

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\* *The Hill of Life*, at the bottom of which is a sea-god, in allusion to the  $\lambda\iota\mu\eta\eta$   $\text{Ἡελίοιο}$ , out of which the sun was supposed to rise.—*HOMER, Od. iii. 1.* In the eastern pediment, Helios is actually represented rising from the waves.



which is more especially interpreted as the *darkness* of the infernal regions, <sup>(1)</sup> or the "darkness of night," as *hades* is expressly called by Apollodorus; <sup>(2)</sup> and we are more particularly warranted in attaching this signification to the emblem, by the fact of finding the statues of the three Moiræ, or Fates, the "daughters of night," κοῦραι Νυκτός, <sup>(3)</sup> νυκτεριοί, <sup>(4)</sup> in immediate contiguity to that of Selene. From these circumstances, I consider that the group in the northern extremity represented the earth, and that in the southern the infernal regions. According to this hypothesis, we very naturally find Ceres (Demeter,) and Proserpine (Persephone,) on the one side, and the Parcæ on the other: the rising horses of Helios <sup>(5)</sup> to represent *life*, <sup>(6)</sup> the horses of Selene descending into the ocean, to indicate *death*. Thus, the representation of Helios and Selene in the eastern pediment, unlike their supposed introduction in the pedestal of the statue of Jupiter at Olympia (*Class. Mus.* ii. 372), would be equally expressive with the reason of introducing the Ilissus on the north, and the Cephissus and Callirrhoe in the southern extremity of the western pediment, as explained by Mr. Lloyd (*Class. Mus.* v. 426).\*

The much-contested figure next to Ceres and Proserpine, I regard as the *autochthon* Cecrops, <sup>(7)</sup> the earliest hero-king of Athens. The general attribution of it to Theseus is an anachronism, that hero not having been born till subsequently to the

<sup>1</sup> HOMER, *Il.* xv. 191; xxi. 56; *Od.* xi. 57; xx. 356: and *Hymn. ad Cer.*

<sup>2</sup> APOLLOD. i. 1, sec. 5; and 2, sec. 1.

<sup>3</sup> DUBNER, *Fragm. Eurip. Anon. Trag. Frag.* 216.

<sup>4</sup> ORPHEUS, *Hymn.* lviii. 114.

<sup>5</sup> It was frequently customary among the ancients to represent two or more circumstances by the same emblem. It is therefore possible that the introduction of these horses may have reference to the Hymn to Minerva, in which Homer says,—

Στήσεν δ' Ὑπερίωνος ἀγλαὰς υἱὸς

Ἴππους ὠκύποδας θηρόν χρόνον.

<sup>6</sup> ζῶαρκεος ὡ οὐα πηγῆς

Αὐτός ἐχων κληῖδα.—PROCLUS, *Hym. ad Apol.*

<sup>7</sup> APOLLOD. *Bibl.* xiv. 1. Dr. BRAUN considers it to be Bacchus, a deity who would be equally indicative of the earth.

period represented by the sculpture. The characters selected in such a composition would naturally be those existing at the period assigned, or such as pre-existed. Minerva's birth is proclaimed to Athens (<sup>1</sup>) and the earth, and a figure is very appropriately introduced, the appearance of which would indicate at once the connexion with Athens, and the novelty of the event portrayed.

There yet remains one vacant space in the southern extremity of the composition, corresponding to the position of Iris in the northern. It has been imagined that this space was occupied by Nike, advancing towards the virgin goddess; but it seems far more probable to suppose that the figure occupying this position would assimilate in attitude and character with the Iris of the opposite group; that is to say, that the figure occupying this position should be Mercury. The central group, which we have just considered, closed in by the figures of Mars and Venus on one side, and of Apollo and Neptune on the other, is Olympus. Within this region, every eye is directed to the new-born goddess, with the various tokens of joy, wonder, fear, or envy, as the different personages of the scene were influenced.

"The immortal gods were seized with admiration," (<sup>2</sup>)

"At this startling sight to Olympus." (<sup>3</sup>)

This unity of action alone can express the precise moment of time so essentially necessary to be indicated in this scene, especially if the figure of Minerva were represented in any other manner than as issuing from the very head of Jupiter. By the striking attitude given to the figure of Minerva, and the unity of action in the other figures, we may say,—

"Phidiæ signum simul adspectum et probatum est." (<sup>4</sup>)

Outside the precinct of this sacred sphere, the individuals

<sup>1</sup> The reader must bear in mind the fable related by Pindar and Diodorus, respecting the first worship of Minerva at Athens and Rhodes.

<sup>2</sup> Ζεὺς δ' ἔχε πάντας ὀφθαλμοὺς ἀσπάζων.—HOM. *Hymn. ad Min.*

<sup>3</sup> φοβερὰν εἶαν Ὀλύμπῳ.—ANACR. lili.

<sup>4</sup> CIC. *Brut.* 64.

who compose the terminal groups have their faces averted, as being unconscious of what is passing in the heavens above. Thus, Pluto is represented as being ignorant of the events transacting in Olympus (*Iliad*, xx. 61). Iris, however, is dispatched to the earth, and particularly to Attica, to announce the joyful event; while Mercury, on the other side, is commissioned by Jupiter to proclaim the news to the sad inhabitants of the realms below.

The representation, therefore, embraces the entire *Cosmos*: the scene takes place in the presence of the gods, but the event is immediately communicated to Gaia and Hades, to the living and the dead. Such an interpretation is, I conceive, both plain and evident; and one that, while it explains perfectly every requisite condition of the scene, completely answers every objection and difficulty that have been raised against the introduction and attitude of the several figures. The treatment seems at once simple and poetical, and, being so, it is essentially Greek. Had a Roman or a modern sculptor been called upon to indicate such a scene, he would probably have represented the city of Athens with a turreted crown, and a portion of the city, perhaps, on one side; and on the other he would have introduced grim Pluto and sad Proserpine, with the monster Cerberus. Instead of damaging the effect of his sculpture by the introduction of such objects of terror and aversion, the Greek artist, who loved everything that was beautiful, who represented even the Furies as of serene countenance, (<sup>1</sup>) has here indicated that fearful place of abode, the Infernal Regions, by three quiet female figures, the graceful attitude of whose bodies is inimitable. The reclining or end figure, Clotho, the youngest of the sisters, is perfect loveliness!

"Nocturnal Fates! mild, gentle, gracious-fram'd,  
Atropos, Lachesis, and Clotho nam'd." (<sup>2</sup>)

<sup>1</sup> PAUS. i. 28, sec. 6.

<sup>2</sup> Ἄλλα μοι νυκτέρωι μαλακοφρονες ἠπιόθνημοι

Ἄτροπε, καὶ Λάχεσι, Κλωθώ.—ORPHEUS, *Hymn*. lviii. 14.

It remains now to offer a few additional observations on the statue of Minerva, this being the point on which the whole of the present theory depends.

It fortunately happens, that portions of the head and bust of the Minerva of the western pediment have been preserved to us. These fragments are sufficient to show that the eyes were filled in with precious stones, that the helmet was of bronze, and that the ægis also was decorated with brazen serpents<sup>(1)</sup>.

This toreutic decoration, this application of colour and metal, may serve as an evidence of the general application of polychromy to these sculptures; but care must be taken in the manner of adopting it. In the Æginetan and earlier sculpture, the whole figure was more or less painted, a custom derived from the practice of using wood, or terra-cotta, in early buildings. In the works of pure Greek art, colour must have been employed generally, or used with extreme caution.<sup>(2)</sup> Either the whole building, its sculpture with its architecture, was

<sup>1</sup> Maintenant le fragment colossal de statue de Minerve a décidé la question : on ne peut y méconnaître l'égide, chaque point des angles est percé d'un trou, pour y pouvoir rapporter en bronze doré les glands précieux qui faisoient l'ornement. On a trouvé sur le plan inférieur du même fronton le demi-masque de la déesse ; ses yeux sont creusés pour y encastrer les globes d'une matière plus précieuse, ainsi que Phidias lui-même l'avoit pratiqué dans le colosse de la déesse placé dans le temple : un sillon, faisant le contour de son front, indique jusqu'où descendoit le casque de bronze doré qui le couronnoit.—VISCONTI, *Mémoire sur les Ouvrages de Sculpture qui appartenoient au Parthéon*. 8vo. Lond. 1816, p. 23-25.

<sup>2</sup> In referring to the sculptured pediment of the British Museum, it is due to the eminent artist who executed it to acknowledge its great superiority over other similar works in the metropolis : at the same time, a slight want of balance, a want of delicacy in the drapery, a preponderance of straight lines, the Atlas-like position of one figure of the pediment, and the doubtful authority of introducing sculpture *en ronde-bosse* to an Ionic building, prevent my considering it as wholly satisfactory : added to which, the manner in which gilding is applied to so many parts of the composition is, to my mind, like a painting in which too many lights are introduced. Had it been considered necessary to represent the figure of Astronomy, it might have been sufficiently indicated without the introduction of an armillary sphere ; and, having this, it would not have been necessary to gild it. I must confess, when I first saw it, I thought the workmen had forgotten a portion of their centering, or a cradle for some work they had left unfinished. Connected with this subject, it has been well remarked by Colonel Leake, "that the gods were dis-

equally coloured, or those parts only were heightened in effect by colour, which were intended to be the most prominent, and to produce the greatest effect upon the eye.

With the exception of the parts just described, and of the spear and trident, which may have belonged to the two principal actors, the remaining figures exhibit no evidence of metal decoration or gilding, and it is probable that they were not profusely ornamented with coloured pigments: <sup>(1)</sup> for not only do we find indications of few accessorial ornaments connected with the other figures of the pediments, the delicate forms of which would require application of metal and gilding, but in no other head but that of Minerva, in the western pediment, were the eye-sockets filled in with precious stones. This circumstance is remarkable, as it shows that the effect was intended to be concentrated in the principal figure.

Now, if we find that the statue of Minerva in the western pediment was so conspicuously decorated, in a composition in

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tinguished from one another, among the Athenians, more by countenance, attitude and form, than by symbols;” and this remark will apply to their sculpture in general :

“Sua quemque Deorum

Inscribit facies.”—OVID. *Met.* vi. 1.

At the same time it must be remembered, that if other colours had been applied, so as to carry out the blue and gilding, all connexion would have been destroyed between the pediment and the rest of the architecture, the contrast between which is already too violent; and it was doubtless this circumstance which induced Sir Richard Westmacott to hesitate in adopting a complete polychromatic decoration. The blue colour, however, is exceedingly effective: \* and altogether, notwithstanding the few objections just noted, the pediment enables us to form some idea of the glorious nature of the Parthenon-compositions in their pristine grandeur.

<sup>1</sup> From an examination of the Parthenon friezes, we learn that many parts of the sculptures were worked out in metal, painted to imitate marble: and it is probable that the minor accessories, as the hatchet of Vulcan, the sword of Mars, and the lyre of Apollo, were either of marble, or in imitation of that material; that the sceptres of Jupiter and Juno, being more important accessories, were of ivory; and that the arms of Minerva alone were gilt.—See *Desc. Ant. Marb. Brit. Mus.* viii. 38, 46, &c.

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\* The tympanum of the Parthenon appears to have been coloured red; and if we may judge from M. Hittorff's restoration, its effect must have been equally beautiful with the blue colour employed in the Æginetan pediment.



which she held little more than equal honour with her great rival, it is probable that, in the eastern pediment, her statue would be distinguished by even greater splendour. Her figure would be the principal object in the composition, and her arms and accoutrements would glitter with gold and colour. (1) Not only would this be required by the laws of art, but the character and attributes of the divinity would demand such treatment at the hands of the sculptor.

In the hymn to this divinity, attributed to Homer, she is described as—

“ having warlike arms,  
Golden, splendid.” (2)

And in the *Iliad* we read—

Among them was Minerva, blue-eyed maid !  
Bearing the *Ægis* of immortal aid.  
Round the bright rim a hundred serpents roll'd, (3)  
Form'd the dread fringe, and seem'd to burn in gold :  
Each finely wrought, as in a weaver's loom,  
Each of pure gold, and each a hecatomb. (4)

In the description of Cleanthes' painting, Philostratus says—

“ It was difficult to perceive the nature of her armour, for as various as are the colours of the rainbow, so, sparkling by turns with changing light, appeared the armour of the goddess. (5)

<sup>1</sup> In the Cospiano Mirror of Bologna (see figure, page 356), we perceive Vulcan shading his eyes with his hand from the dazzling splendour of Minerva's appearance.—*Annali*, 1851. p. 143.

<sup>2</sup> Πολεμήϊα τεύχε' ἔχουσιν,  
κρύσεα, παμφανόωντα.

<sup>3</sup> Θόρυκος' ἐχίδνης περιβόλοις ὀπλισμένον.—EUR. *Ion*, 993.

<sup>4</sup> μετὰ δὲ, γλαυκῶπις Ἀθήνη.  
Αἰγίδ' ἔχουσι' ἐρίτιμον, ἀγήραον, ἀθανάτην τε·  
Τῆς ἑκατὸν θύσανοι παγχρύσειοι ἡερίδονται,  
Πάντες εὐπλεκίης, ἑκατόμβειος δὲ ἕκαστος.—*Il.* ii. 446-449.

<sup>5</sup> Τὴν δὲ ὕλην τῆς πανοπλίας οὐχ ἂν συμβάλοι τις. Ὅσα γὰρ τὰ Ἴριδος χρώματα, παραλλαττόνους ἐς ἄλλοτε ἄλλο φῶς, τοσαῦτα καὶ τῶν ὅπλων.—PHILOST. *Imag.* ii. 27.

The splendour of Minerva's arms appears to have been the reason of selecting as the emblem of that divinity a bird, the sparkling nature of whose eyes seems to be alluded to in its name, γλαυξ.—EUSTATH. *Comment. in Iliad.* p. 87. Rome.

Thus, her image was one easily to be distinguished—

εἰκὼν ὥς ὁραῖν.<sup>(1)</sup>

Above her gorgeous,<sup>(2)</sup> golden casque,

χρυσεοπήληξ.<sup>(3)</sup>

waved a lofty crest,

ὑπὸ λόφῳ κάρα.<sup>(4)</sup>

capite se totum tegit.<sup>(5)</sup>

radiant with gold—

χρυσόλοφος.<sup>(6)</sup>

Her face was characterized by extreme beauty—

καλὴ πάνυ.<sup>(7)</sup>

αἰεὶ καλὸν ὄμμα τὸ τήνας.<sup>(8)</sup>

Tresses of beautiful golden hair adorned her brows—

Ἀθηνῇ εὐπλόκαμος.<sup>(9)</sup>

λιπαροπλόκαμος.<sup>(10)</sup>

Flava Minerva.<sup>(11)</sup>

Her bright blue eyes sparkled with liquid fire<sup>(12)</sup>—

oculos splendidos.<sup>(13)</sup>

The rosy blush of dawn suffused her cheeks—

τὸ δ' ἔρευθος ἀνέδραμε πρόϊον, ὅταν ἡ βόδον.<sup>(14)</sup>

Golden wings appeared behind her shoulders—

χρυσᾶιν πτερύγοιν.<sup>(15)</sup>

Beautiful, ambrosial, golden wings hung upon her feet—

καλὰ πίδαλα, ἀμβρόσια, χρύσεια.<sup>(16)</sup>

Gold, purple, and blue were the colours of her vesture—

Triplíce colore pallium induebat, distinctum aureo, purpureo et caelesti.<sup>(17)</sup>

On her broad breast reposed

εὐρύστερνον Ἀθήναν.<sup>(18)</sup>

The golden-fringed Ægis.<sup>(19)</sup>

<sup>1</sup> EURIP. *Herc. fur.* 998.

<sup>2</sup> LUCIAN. *Dial. Deor.* viii. See also the Sicilian coins of this divinity.

<sup>3</sup> CALLIM. *Hym. in Lavac. Pall.* 43.

<sup>4</sup> EURIP. *Herc. fur.* 997.

<sup>5</sup> FULGENTIUS, *Myth.* ii. 3.

<sup>6</sup> ARISTOPH. *Lysis.* 344.

<sup>7</sup> LUCIAN. *Deor. Dial.* viii.

<sup>8</sup> CALLIM. *Hymn. in Lavac. Pall.* 17.

<sup>9</sup> HOM. *Il.* vi. 380; *Od.* viii. 40.

<sup>10</sup> CALLIM. *Hymn. in Lav. Pall.* 32.

<sup>11</sup> OVID. *Amor.* i. 1, sec. 7, 8; *Past.* vi. 652; *Trist.* i. 10, sec. 1. That her hair was golden, would appear from the colour of her eyes.

<sup>12</sup> The terrible nature of her blue eyes was supposed by many poets to have reference to the eyes of lions or other beasts of prey.—EUSTATH. *Comment. in Iliad.* A, 85, 86, *Rome*; PHURNUTUS, xx.

<sup>13</sup> ALBRIC. *De Deor. Imag.* viii.; THEOCR. *Idyl.* xx. 25; ANAC. xiviii.

<sup>14</sup> CALLIM. *Hym. in Lav. Pall.* 27, 28. Compare ANACR. liii. 38, *de Rosa.*

<sup>15</sup> *Ut supra*, pp. 376, 377.

<sup>16</sup> *Ut supra*, p. 376.

<sup>17</sup> ALBRIC. *De Deor. Imag.* viii. Compare ATHENÆUS, v. 197, d. "triplices tunicas." ARNOB. *adv. Gent.* 112, lib. iii.

<sup>18</sup> THEOCR. *Idyl.* xviii. 36.

<sup>19</sup> *Ut supra*, p. 399.

She wielded a golden spear—

χρυσολόγχος παλλάδος.<sup>(1)</sup>

And on her golden shield

Παλλάδος χρυσόσπιδος.<sup>(2)</sup>

a golden Gorgon glittered.

χρυσήν ἔχουσα Γοργόν'.<sup>(3)</sup>

These several particulars of the attributes and appearance of Minerva were regarded by the ancients as of distinct moral import. They signify that *Wisdom* is concealed, and has to be sought for; but that when she is exposed she becomes evident to all men. They show us the beauty of wisdom, its variety and richness, its adorning grace, its elevating character, its velocity of conception, its persuasive eloquence, its constant watchfulness, its invincible strength, its powerful protection, its acute penetration, its resistless force, its confusion of error, and its universal supremacy.

The question of the true front of the Parthenon is now definitely settled, but the subject affords us this consideration: the western portico being that nearest to the Piræus and the Propylæa, and therefore that first seen, would, with the magnificent arrangement of its pyramidal sculpture, naturally excite the admiration of the stranger visiting the city for the first time; after viewing which with suitable attention and delight, we may imagine the pleasure the citizens would experience in leading him up to what he might have considered the Opisthodomus, and witnessing the wonder and ecstasy with which he would behold this transcendently superior composition.<sup>(4)</sup> At the western extremity of the temple they would explain to him the importance and power of their protecting deity, and the zealous care and protection she constantly manifested to their favoured land; at the eastern they would point out the higher advantages they received from the spiritual character of the goddess,—her

<sup>1</sup> EURIP. *Ion*, 9; ARISTOPH. *Thesmoph.* 335.

<sup>2</sup> EURIP. *Phoen.* 1387; *crystal shield*, GYRALD. *Hist. Deor. Syntag.* 339, F; ALBRIC. *De Deor. Imag.* viii.

<sup>3</sup> EURIP. *Fragm.* 354, *Erechth.* v.

<sup>4</sup> Of whatever nature it might have been, as designed by Phidias.

ethical as contrasted with her physical nature,—and assert the pre-eminence in wisdom of the Athenians over the other Greeks, by reason of the power and attributes of the virgin goddess.

This soaring attitude of Minerva, raised from the ground and rising upwards with extended arms, is in perfect analogy with the subject of this pediment as distinguished from the western. In the one all is conflict and contention; in the other a divine tranquillity pervades the whole. There the attention is confined to the land of Attica; Neptune is vainly contending against Minerva for the ground,—but in the eastern pediment we behold the spiritual dominion of the goddess; the mind is absorbed by the excellency of wisdom. The daughter of *Metis*, endued with the sovereignty of omnipotence, despises mundane enjoyment, and fixes her regard on spiritual excellence—

“Unconscious of base earth’s control.”<sup>(1)</sup>



Ὁ μέγα σεμνὰ Νίκα, τὸν ἐμὸν  
βίον κατέχοις,  
καὶ μὴ λήγῃς στεφανοῦσα.

1851.

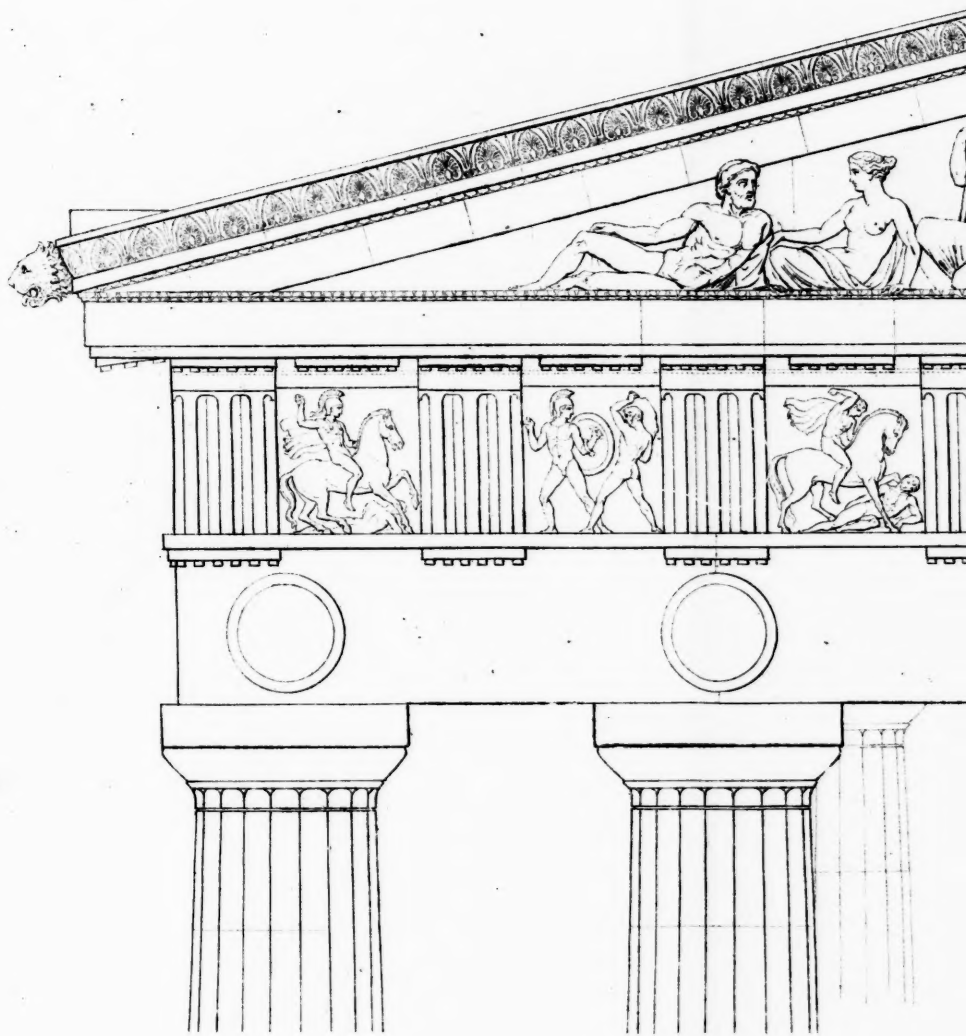
EDWARD FALKENER.

<sup>1</sup> TAYLOR'S *Proclus, Hymn to Minerva*.

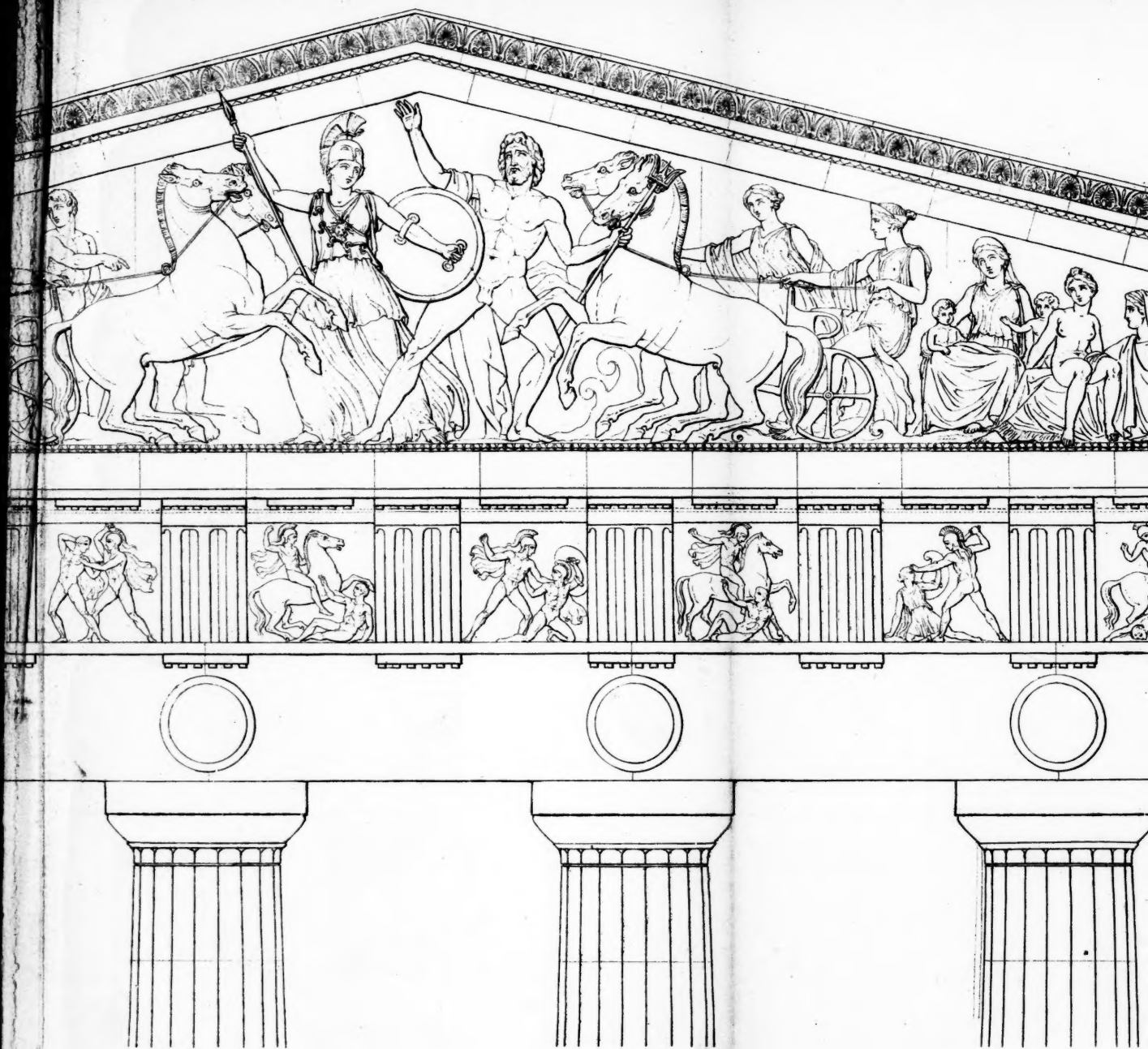
The *tail-piece* of this essay exhibits a first design for the centre of this composition, by which Minerva would appear above the head of Jupiter, and in which the figure would assume the form of an acroterial ornament. The reader can select which he pleases.



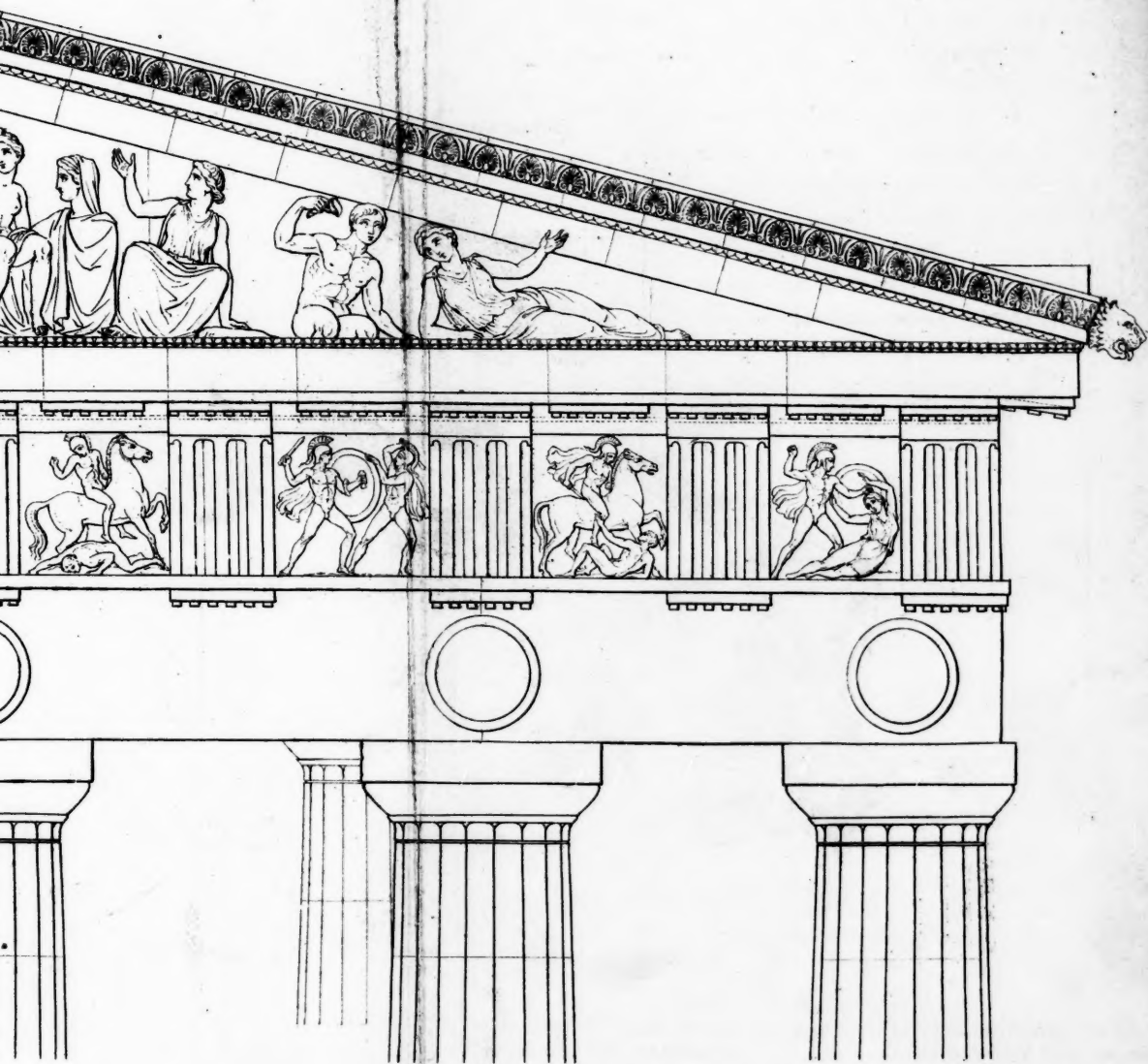


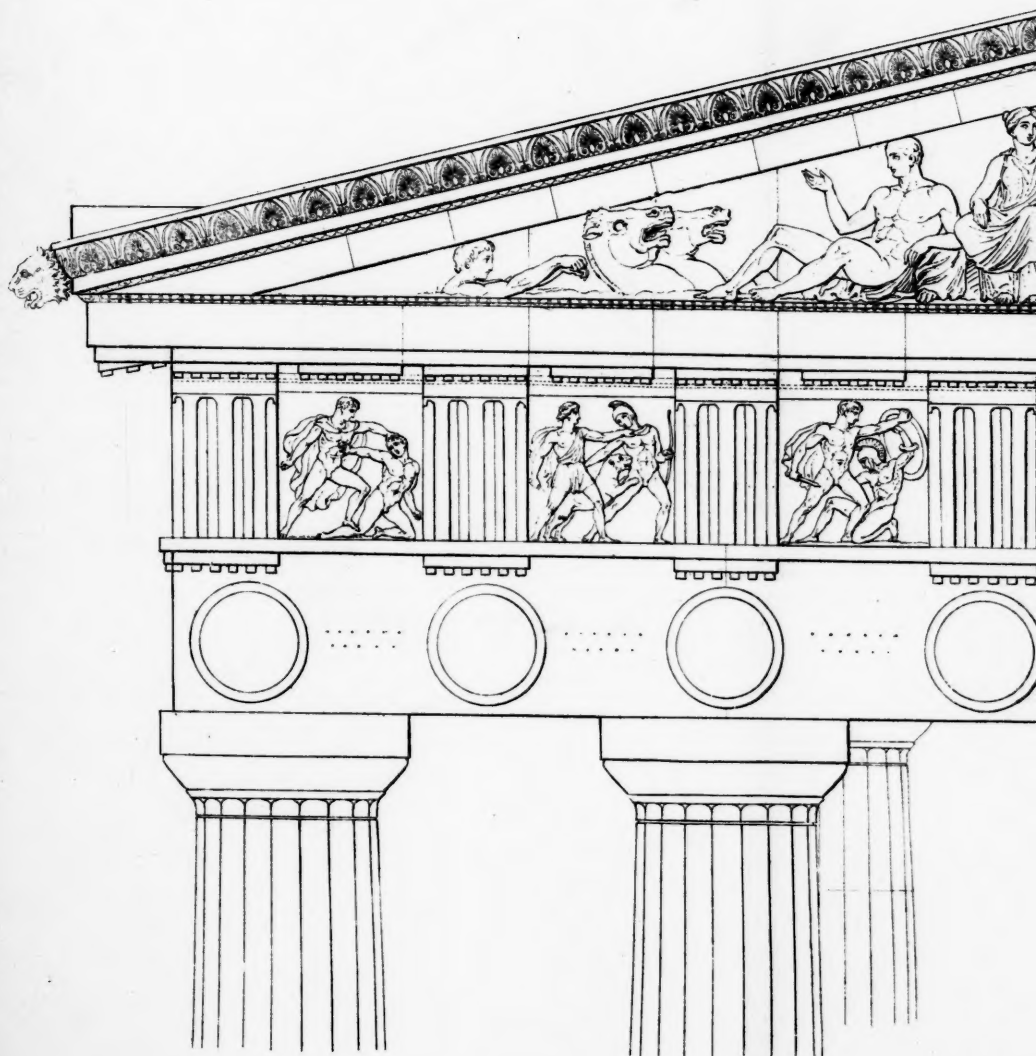






THE WESTERN PEDIMENT  
OF THE  
PARTHENON.





E. F. DEL





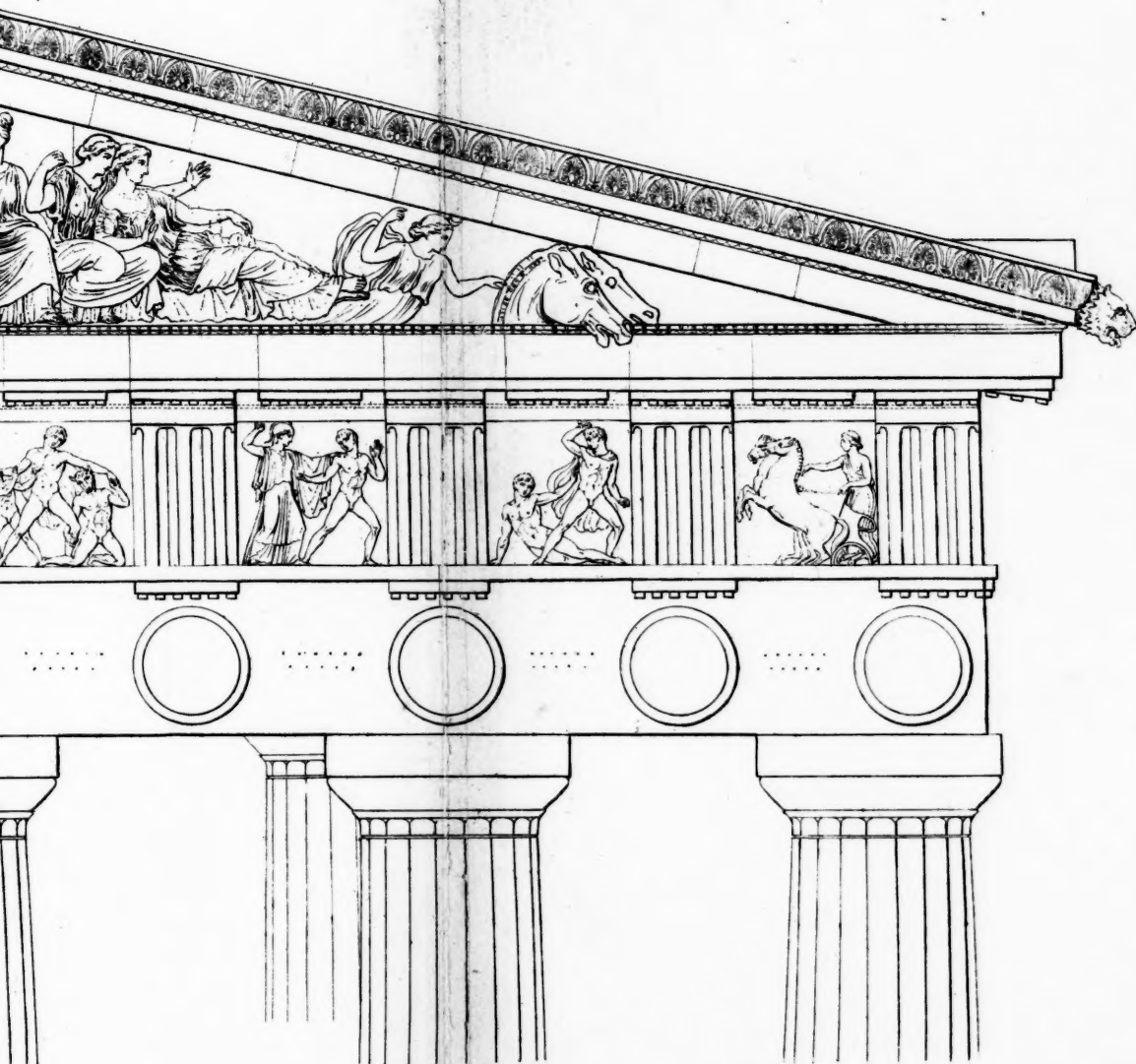
THE EASTERN  
OF THE  
PARTHENON

AS RESTORED BY E.



THE EASTERN PEDIMENT  
OF THE  
PARTHENON.

AS RESTORED BY E. FALKENER.



DAY & SON LITHO TO THE QUEEN.



## XXVII.

EXTRACT FROM THE REPORT OF THE SELECT  
COMMITTEE OF THE HOUSE OF COMMONS ON  
THE EARL OF ELGIN'S COLLECTION OF SCULP-  
TURED MARBLES.

*March 25th, 1816.*

YOUR Committee cannot dismiss this interesting subject, without submitting to the attentive reflection of the House, how highly the cultivation of the Fine Arts has contributed to the respect, character, and dignity of every government by which they have been encouraged, and how intimately they are connected with the advancement of everything valuable in science, literature, and philosophy. In contemplating the importance and splendour to which so small a republic as Athens rose, by the genius and energy of her citizens, exerted in the path of such studies, it is impossible to overlook how transient the memory and fame of extended empires and of mighty conquerors are, in comparison of those who have rendered considerable States eminent, and who have immortalized their own names by these pursuits. But if it be true, as we learn from history and experience, that free governments afford a soil most suitable to the production of native talent, to the maturing of the powers of the human mind, and to the growth of every species of excellence, by opening to merit the prospect of reward and distinction, no country can be better adapted than our own to afford an honourable asylum to these monuments of the school of Phidias, and of the administration of Pericles; where, secure from further injury and degradation, they may receive that admiration and homage to which they are entitled, and serve in return as models and examples to those who, by knowing how to revere and appreciate them, may learn first to imitate, and ultimately to rival them.



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